Petition

81-1719

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In The

Supreme Court of the United States

October Term, 1981

WILLIAM O. PETRUSCH, JR. d/b/a
B & L DISTRIBUTION CENTER,

Petitioner,

v.

TEAMSTERS LOCAL 317, SYRACUSE, NEW YORK and NEW YORK STATE TEAMSTERS COUNCIL, HEALTH AND HOSPITAL FUND/PENSION RETIREMENT FUND,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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QUESTIONS PRESENTED

1. Is the Bankruptcy Court's interpretation of the Bankruptcy Code's legislative stay, 11 U.S.C. §362(a), as enjoining a labor organization from picketing to collect the pre-petition debt of a third-party creditor, prohibited by the jurisdictional limitation of the Norris-LaGuardia Act, 29 U.S.C. 101, *et seq.*?

2. Does the jurisdictional limitation of the Norris-LaGuardia Act, 29 U.S.C. §101 *et seq.*, apply to bankruptcy courts created by the Bankruptcy Reform Act of 1978, 11 U.S.C. §101 *et seq.*?

TABLE OF CONTENTS

	Page
Questions Presented	*i*
Table of Authorities	*iv*
Opinions Below	1
Bankruptcy Court	1
District Court	2
Court of Appeals	2
Jurisdiction	2
Statutory Provisions Involved	2
Statement of the Case	5
General Background	6
The Decision of the Bankruptcy Court	7
The Decision of the District Court	8
The Decision of the Court of Appeals	8
Reasons for Granting the Writ	9
I — The courts below erroneously determined that the Norris-LaGuardia Act precludes application of the iegislative stay found in the Bankruptcy Code to certain types of union picketing	11
A. *The Scope of the Legislative Stay is Broad and Clearly Covers the Conduct in Question*	11
B. *The Norris-LaGuardia Act Does Not Preclude Enforcement of Legislative Stays*	13
C. *The Norris-LaGuardia Act, Applicable Only to "Courts of the United States", Does Not Preclude Action By The Bankruptcy Court*	16
II — Under basic concepts of statutory construction, the courts below erroneously limited the scope of the bankruptcy court's jurisdiction	18

Page

III — The purpose of neither the Norris-La-Guardia Act nor the Bankruptcy Code is served by the decision below 23

CONCLUSION 26

APPENDIX

Opinion of U.S. Court of Appeals for the Second Circuit, Dated December 15, 1981 . . . . . A-1

Order to Show Cause & Temporary Restraining Order . . A-6

Affidavit of William O. Petrusch A-8

Affidavit of Samuel J. Costa A-11

Exhibit A — Complaint A-12

Exhibit B — Western Union Mailgram to William Petrusch from Teamsters Local 317 . . . . . A-16

Order of Bankruptcy Judge Leon J. Marketos, Dated September 22, 1981 . . . . . A-18

Excerpts from Hearing before Bankruptcy Court, Dated September 8, 1981 . . . . . A-21

Memorandum-Decision and Order of U.S. District Judge Neal P. McCurn A-23

Order of Chief U.S. District Judge Howard G. Munson, Dated October 7, 1981 . . . . . A-35

Notice of Appeal A-37

Notice of Motion for Stay Pending Appeal A-38

Notice of Motion for Stay of Issuance of Mandate Pending Application for Writ of Certiorari A-42

Judgment of U.S. Court of Appeals for the Second Circuit, Filed December 15, 1981 . . . . . A-45

TABLE OF AUTHORITIES

Cases:	Page
Boys Markets, Inc. v. Retail Clerks, 298 U.S. 235 (1970)	9, 23
Connell Construction Co., Inc. v. NLRB, 421 U.S. 616 (1975)	20
International Longshoremen's Etc., Union v. Wirtz, 170 F.2d 183 (9th Cir. 1948), *cert. denied* 336 U.S. 919 (1949)	16
In Re Third Ave. Transit Corp., et al., Lehman et al. v. Quill, et al., 192 F.2d 971 (2d Cir. 1951)	8, 15
Local 455 v. Kevin Steel Products, Inc., 519 F.2d 698 (2d Cir. 1975)	20
Marathon Pipeline Co. v. Northern Pipeline, 12 B.R. 946 (D. Minn. 1981), *prob. juris. noted,* ___ U.S. ___, 50 U.S.L.W. 3375 (1981)	16
Matter of Becker's Motor Transp. Inc., 632 F.2d 242 (3d Cir. 1980)	17
McAllister v. United States, 141 U.S. 174 (1891)	16
Mookini v. United States, 303 U.S. 201 (1938)	16
Paden v. Union for Experimenting Colleges, Etc., 7 B.R. 289 (N.D. Ill. 1980)	14
Truck Drivers Local Union No. 807, International Brotherhood of Teamsters v. The Bohack Corporation, 541 F.2d 312 (2d Cir. 1976), *cert. denied,* 439 U.S. 825 (1978)	8, 15
United States v. George, 625 F.2d 1081 (3d Cir. 1980)	16

Page

Statutes:

Bankruptcy Reform Act of 1978

11 U.S.C. § 362 ..... 1, 2, 6, 7, 8, 10, 11, 12, 13, 14, 22, 24

11 U.S.C. § 507 25

11 U.S.C. § 1167 ..... 21, 22

Bankruptcy Rules

Rule 401 15

Rule 11-44 14

Norris-LaGuardia Act

29 U.S.C. § 101 ..... 5, 16, 19

29 U.S.C. § 104 16

29 U.S.C. § 113 ..... 5, 8, 16

Other

Publ. L. No. 91-354, 84 Stat. 468 9

28 U.S.C. § 451 17

28 U.S.C. § 1254(1) 2

28 U.S.C. § 1471 20

28 U.S.C. § 2201 17

28 U.S.C. § 7421 17

45 U.S.C. § 151 21

45 U.S.C. § 156 21

Congressional Reports:

S. Rep. No. 95-989, 95th Cong. 2d Sess. (1978) 11, 25

H.R. Rep. No. 95-595, 95th Cong. 1st Sess. (1977) 16, 21, 22

Page

Miscellaneous:

2 Collier on Bankruptcy 12

1A Sands, Sutherland Statutory Construction 19

Note, Bankruptcy and the Limits of Federal Jurisdiction, 95 Harv. L.R. 703 (1982) 22

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

William O. Petrusch, Jr. petitions for a writ of certiorari to review a judgment of the United States Court of Appeals for the Second Circuit entered on December 15, 1981.

OPINIONS BELOW

Bankruptcy Court

The order of the Bankruptcy Court for the Northern District of New York, setting forth findings of fact on the issue of injury and finding the actions of Respondent Teamsters Local 317, Syracuse, New York ("Local 317") in violation of 11 U.S.C. §362(a), (A-18, see also A-21), is not officially reported.

District Court

An appeal of the Bankruptcy Court's order was taken by Local 317 to the District Court for the Northern District of New York. A Memorandum-Decision and Order was issued by the District Court staying, pending appeal, the Bankruptcy Court's order. The Memorandum-Decision and Order (A-23), is not officially reported. That Memorandum-Decision and Order was briefly stayed by order of the district court, per Munson, C.J. (A-35) to allow time for an appeal to be taken to the court of appeals; that order is not officially reported.

Court of Appeals

On October 20, 1981, the Court of Appeals for the Second Circuit issued a stay of the district court's order pending appeal, and expedited the appeal. That order (A-38) is not officially reported.

Thereafter, on December 15, 1981, the court of appeals affirmed, in a per curiam decision, the judgment of the district court. The opinion of the court of appeals (A-1) is not officially reported. The court, in an unreported order (A-42), thereafter denied a request for a stay of issuance of the mandate pending this application for a writ of certiorari.

JURISDICTION

The judgment of the court of appeals was entered December 15, 1981 (A-45). The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

1. Sections 362(a) and (b) of the Bankruptcy Reform Act of 1978, 11 U.S.C. §§362(a) and (b), provide:

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302 or 303 of this title operates as a stay, applicable to all entities, of —

(i) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(ii) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(iii) any act to obtain possession of property of the estate or of property from the estate;

(iv) any act to create, perfect, or enforce any lien against property of the estate;

(v) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(vi) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(vii) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

(viii) the commencement or continuation of a proceeding before the United States Tax Court concerning the debtor.

(b) The filing of a petition under section 301, 302, or 303 of this title does not operate as a stay—

(i) under subsection (a) of this section, of the commencement or continuation of a criminal action or proceeding against the debtor;

(ii) under subsection (a) of this section, of the collection of alimony, maintenance, or support from property that is not property of the estate;

(iii) under subsection (a) of this section, of any act to perfect an interest in property to the extent that the trustee's rights and powers are subject to such perfection under section 546(b) of this title;

(iv) under subsection (a)(1) of this section, of the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power;

(v) under subsection (a)(2) of this section, of the enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power;

(vi) under subsection (a)(7) of this section, of the setoff of any mutual debt and claim that are commodity futures contracts, forward commodity contracts, leverage transactions, options, warrants, rights to purchase or sell commodity futures contracts or securities, or options to purchase or sell commodities or securities;

(vii) under subsection (a) of this section, of the commencement of any action by the Secretary of Housing and Urban Development to foreclose a mortgage or deed of trust in any case in which the mortgage or deed of trust held by said

> Secretary is insured or was formerly insured under the National Housing Act and covers property, or combinations of property, consisting of five or more living units; or
>
> (viii) under subsection (a) of this section, of the issuance to the debtor by a governmental unit of a notice of tax deficiency.

2. Section 1 of the Norris-LaGuardia Act, 29 U.S.C. §101, provides:

> No court of the United States, as herein defined, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in strict conformity with the provisions of this Act; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this Act.

3. Section 13 of the Norris-LaGuardia Act, 29 U.S.C. §113, provides:

> (d) The term "court of the United States" means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia.

STATEMENT OF THE CASE

In a per curiam decision, a three judge panel* of the United States Court of Appeals for the Second Circuit affirmed a district court decision, holding that a bankruptcy court lacks jurisdiction to determine whether picketing activity aimed at the collection of a pre-petition debt violates the legislative stay

*Circuit Judges Timbers and Kearse; District Judge Murphy, United States District Court for the Southern District of New York, sitting by designation.

of Section 362(a) of the Bankruptcy Reform Act of 1978 ("Bankruptcy Code"), 11 U.S.C. §362(a) and, therefore, is prohibited. William O. Petrusch, Jr. d/b/a B & L Distribution Center ("Petrusch"), petitioner, and the debtor in the bankruptcy court, seeks review of the court's decision.

General Background

In 1978, the New York State Teamsters Council, Health & Hospital Fund/Pension Retirement Fund ("Funds") commenced an action against B&L Trucking & Cartage Co., Inc., a corporate entity owned by Petrusch, in New York State Supreme Court, Oneida County. (A-13). The action sought recovery of contribution amounts allegedly owed by B&L Trucking & Cartage Co., Inc. to the Funds. The corporation denied liability in its answer, and the collection action has remained virtually dormant since its institution.

On July 11, 1980, Petrusch, individually, filed a Chapter 13 petition in the Bankruptcy Court for the Northern District of New York. The petition was confirmed on or about November 1, 1980. Local 317 does not appear on any list of creditors.

During July of 1981 Petrusch, as president of B&L Trucking & Cartage Co., Inc., received a mailgram from the Union advising him that unless the corporation's purported delinquencies were resolved, the Union would take whatever action it deemed necessary, "up to and including but not limited to strike action," to secure payment. (A-17). The Union commenced picketing of an unrelated Petrusch enterprise — B&L Distribution Center — in July of 1981. None of the employees of B&L Distribution Center ("B&L"), are members of Local 317 or covered by either of the Funds. B&L, unlike B&L Trucking and Cartage Co., Inc., is not a corporate entity, but rather is an unincorporated business owned and operated by Petrusch individually.

Subsequent to the initiation of picketing, Petrusch sought relief from the bankruptcy court. Specifically, he filed a petition alleging that the Union's picketing activities violated the legislative stay provision of Section 362(a) of the Bankruptcy Code. The court issued an order directing the Union to show cause why it should not be required to comply with Section 362(a). Thereafter, a hearing was held and an order requiring such compliance issued. This order found that the Union's actions "have resulted in the debtor being unable to comply with the repayment requirements of his [Chapter 13] plan." (A-19). The court further determined the Union's actions to be in violation of the automatic stay provisions of Section 362(a) and its order repeated the mandate expressed in that Section.

The Union appealed the bankruptcy court's decision to the United States District Court for the Northern District of New York and sought a stay of the bankruptcy court's order pending that appeal. The bankruptcy court denied the stay pending appeal; thereafter, however, the district court in a written decision, per Judge McCurn, granted the stay. (A-23). Petrusch appealed that order to the United States Court of Appeals for the Second Circuit; he also sought, and received from the district court (Munson, C.J.), a limited stay of Judge McCurn's order. (A-35). A full stay of Judge McCurn's order pending completion of the appeal was granted on October 20, 1981 by the Second Circuit. (A-38). The Second Circuit thereafter expedited the appeal of the district court's judgment. Ultimately, the Second Circuit affirmed the district court in a per curiam decision. (A-1).

The Decision of the Bankruptcy Court

Following a hearing at which testimony was taken, the Bankruptcy Court granted the relief Petrusch sought — a determination of the applicability of the legislative stay provisions of

11 U.S.C. §362. The court found that the actions of Local 317, "including the picketing of [Petrusch's] business and customers, have resulted in [Petrusch] being unable to comply with the repayment requirements of his plan." (A-19).

The Decision of the District Court

Local 317 appealed the bankruptcy court's order to the District Court for the Northern District of New York, and sought a stay of the bankruptcy court's order pending that appeal. In granting the stay, the district court concluded that the bankruptcy court was a "court of the United States" (A-29) and that the parties were engaged in a "labor dispute" (A-28) within the meaning of the Norris-LaGuardia Act, 29 U.S.C. §113(c). The court framed the issue as "whether the Norris-LaGuardia Act will take precedence over the later codification of the Bankruptcy Court's power to preserve the assets of the debtor's estate." (A-30). Although finding no other case in which these two provisions had been "pitted against" each other, the court concluded that priority must be afforded the more specific, although earlier enacted, Norris-LaGuardia Act under fundamental rules of statutory construction. Accordingly, the court concluded that the bankruptcy court was without jurisdiction to issue the order it did.

The Decision of the Court of Appeals

The court of appeals affirmed the order of the district court. The court's decision rested primarily on an absence in the Bankruptcy Code's legislative history of any explicit congressional intention to supersede or transcend the Norris-LaGuardia Act. (A-5). Also relied upon by the court were two of its earlier decisions in which the Second Circuit had found the bankruptcy court's jurisdiction under the former Bankruptcy Act limited by the Norris-LaGuardia Act, *Truck Drivers Local Union No. 807, International Brotherhood of*

Teamsters v. The Bohack Corporation, 541 F.2d 312 (2d Cir. 1976), *cert. denied,* 439 U.S. 825 (1978) and *In Re Third Ave. Transit Corp., et al., Lehman et al. v. Quill, et al.,* 192 F.2d 971 (2d Cir. 1951).

REASONS FOR GRANTING THE WRIT

The Norris-LaGuardia Act has a long history in the development of this country's labor movement. It was, undeniably, an important piece of legislation which had tremendous impact when enacted, although its current vitality has been questioned. See *Boys Markets, Inc. v. Retail Clerks, Local 770,* 398 U.S. 235, 250 (1970). An equally important legislative enactment, however, is the Bankruptcy Code which represents a comprehensive compilation of federal bankruptcy law. Its importance is evidenced by the fact that it is the culmination of approximately eight years of legislative action and deliberation. The Code's beginnings can be traced back to the 1970 legislative creation of the Commission on the Bankruptcy Laws of the United States, Pub. L. No. 91-354, 84 Stat. 468. The Commission was established in recognition of the astronomical increase in bankruptcies over the preceding 20 years (1000 percent), the widespread recognition of problems under the then existing Bankruptcy Act, the vast expansion in credit transactions, and the limited experience and understanding of the federal government and the nation's commercial community in assessing the operation of the former Bankruptcy Act. Pub. L. No. 91-354, 84 Stat. 468. The Commission was charged with not only considering modifications to the Bankruptcy Act, but with considering the basic philosophy of bankruptcy itself. *Id.* What emerged, eight years later, was the Bankruptcy Code.

The decisions below, if permitted to stand, would seriously impair meaningful implementation of this later federal legislation and its clear objective to provide an effective, and

necessarily complete, mechanism for the orderly processing of bankruptcies. Under these decisions, the Bankruptcy Code would provide the guidelines governing the rights and obligations of all debtors, and of all creditors — save one. The most debtor-harassing activities of a labor organization acting as a creditor — *or, as in this case, merely on behalf of a creditor* — would be immune from the very heart of the Bankruptcy Code, the legislative stay found in Section 362(a). The illogic of this immunity is clearly exemplified in the context of this case. Had the state court action commenced by the Funds in 1978 to collect the alleged debt in issue here been directed against Petrusch individually, it clearly would have been stayed by Section 362(a) of the Bankruptcy Code with the filing of Petrusch's Chapter 13 petition. The stay would preclude the Funds, as Congress intended, from continuing the attempt to collect, to the disadvantage of other creditors and to the unnecessary detriment of the debtor, the alleged pre-petition debt owed. There can be no question that this would be the result. Yet, under the decisions below, the Funds are able to, and have, circumvented this prohibition against collection by engaging the union to picket Petrusch — to the point of financial ruin — to collect that same debt. It is incredible to view this result as within the intention of Congress. But that is precisely the result permitted by these decisions.

It is, therefore, necessary for this Court to determine the appropriate interplay between these two important statutes and to resolve their inevitable clash in such a way as to promote the true intention of Congress. The specific deficiencies in the accommodations reached by the courts below follow.

I

The courts below erroneously determined that the Norris-LaGuardia Act precludes application of the legislative stay found in the Bankruptcy Code to all instances of union picketing.

A. *The Scope of the Legislative Stay Is Broad and Clearly Covers The Conduct in Question.*

The intended scope of the legislative stay contained in Section 362 is apparent from its language:

> §362 Automatic Stay.
>
> (a) Except as provided in subsection (b) . . . a petition operates as a stay . . . of —
>
> (iii) *any act* to obtain possession of property of the estate or of property from the estate;
>
> (vi) *any act* to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title against any claim against the debtor.

11 U.S.C. §362(a) (emphasis added). Literally, the stay automatically prohibits any, and every, act which attempts the collection of a pre-petition debt.

The legislative history of the Bankruptcy Code fully supports this literal broadness:

> The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It stops *all* collection efforts, *all* harassment, and *all* foreclosure actions. It permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy.

S. Rep. No. 989, 95th Cong. 2d Sess. (1978) at 54-55 (emphasis added).

Commentators have agreed with this interpretation, noting:

> The stay of Section 362 is extremely broad in scope and aside from the limited exceptions of subsection (b) should apply to almost any type of formal or informal action against the debtor or the property of the estate.

2 Collier on Bankruptcy ¶362.04. More specifically,

> Paragraph [362(a)] 6 is intended to prevent creditor harassment of the debtor attempting to collect prepetition debts. The conduct prohibited ranges from that of an informal nature such as by telephone contact or by dunning letters to more formal judicial and administrative proceedings . . . .

Id. at ¶362.04[6].

The cases decided under the new Bankruptcy Code to date are in accord, see *e.g., In Re Howren,* 10 B.R. 303, 306 (Bank. Ct. D. Ka. 1980) ("This provision [362(a)(6)] was intended to prevent *any kind of attempt* to collect prepetition debts." (emphasis in original)), finding subtle, as well as obvious, attempts at collection in violation of the statute, see *e.g. In Re Ware,* 9 B.R. 24 (Bank. Ct. W.D. Mo. 1981) (college's withholding of transcript until student loan obligations fully satisfied violates stay).

Local 317 cannot seriously argue, nor has any court determined, that the picketing activity in question here does not violate the prohibition of Section 362. There can be no doubt that this picketing falls within the broad prohibitory language and intent of Section 362(a)(6). It consistently has been Local 317's position that the debt in question is owed by Petrusch. Moreover, the bankruptcy court necessarily found that the debt is a "pre-petition" debt, having arisen prior to the filing of Petrusch's petition in the bankruptcy court, and that the objective of the picketing was to secure the collection of that debt. (A-20, A-21-22). The district court similarly found that the

picketing in question was for the purpose of collecting the debt claimed due by the funds in 1978. (A-25). The court of appeals did not overturn either lower court's conclusion on this issue and appears itself to have accepted this characterization of the facts. (A-4). Clearly, this picketing to collect a pre-petition debt violates the prohibition of Section 362(a) against engaging in "any act" to collect such a debt. The only issue is whether the Norris-LaGuardia Act somehow precludes enforcement of this prohibition.

B. ***The Norris-LaGuardia Act Does Not Preclude Enforcement of Legislative Stays.***

The pleadings before (A-8, A-11), and the order issued by (A-6, A-18), the bankruptcy court in this proceeding demonstrate unequivocally the basic thrust of Petrusch's position: Local 317's actions were violative of the automatic stay provision of 11 U.S.C. §326(a). Both the bankruptcy court and the district court recognized the issue as being one of "compliance with 11 USC §362(a)." (A-18, A-29). When the bankruptcy court's order is placed in its proper context, it is clear that the effect of that order was no more than to declare the applicability of Section 362(a). While the court's order speaks in terms of "enjoining" and "restraining", it does so only in paralleling the language of Section 362 itself, "enjoining" not just the picketing but, as Section 362 provides, the

> commencement or continuation including the issuance or employment of process, of a judicial, administrative, or other proceeding, including picketing the debtor's business or against the debtor's interest, that was or could have been commenced before the commencement of this case under this title, or to recover a claim against the debtor that arose before commencement of the case under this title. . . .

With the exception of the parenthetical phrase noting the applicability of the prohibition specifically to the picketing, the decretal paragraph of the bankruptcy court's order corresponds identically with the language of Section 362(a). Certainly, as a matter of substance if not form, the bankruptcy court merely determined the applicability of Section 362(a) to Local 317's activities, as requested.

The effect of finding Section 362(a) applicable is to halt the contested picketing, as the bankruptcy court declared. However, that effect is achieved by the direct mandate of Congress, and not by court action. The stay of all collection attempts, regardless of form, occurs *automatically* upon the filing of a petition by the debtor. 11 U.S.C. §362(a). Neither imposition nor continuation of the stay requires any judicial action. 11 U.S.C. §§362(a) and (c). Judicial participation is not required until contempt is sought against a party violating the automatic stay or until a party affected by the stay seeks affirmative judicial relief therefrom. 11 U.S.C. §362. In the purest sense, the stay of picketing under Section 362 is a legislative stay: it is congressionally required and imposed. *Cf. Paden v. Union for Experimenting Colleges, Etc.*, 7 B.R. 289, 292 (N.D. Ill. 1980) (noting, with respect to Bankruptcy Rule 11-44, a narrow predecessor of Section 362, "the . . . . stay issues automatically. Its authority may be said to flow from the statutory provision and not the bankruptcy court.")

The Norris-LaGuardia Act limits the jurisdiction of certain federal *courts* to "issue" stays or injunctions of union activity, including picketing. It does no more than that, and certainly does not serve as a bar to congressional action. There can be no doubt that Congress has sufficient power to enact legislation which would provide expressly that any picketing by a labor organization against a debtor to collect a pre-petition debt is "stayed" pending the bankruptcy proceeding. Such legislation would not limit or implicate the Norris-LaGuardia Act for the

simple reason that the stay, or injunction, would be a direct congressional mandate, not requiring the jurisdiction of any court for its imposition (only for determining its applicability and issuing sanctions in the event violated). This is precisely what Congress has done here, with one exception — picketing has not been expressly included in the statutory stay. However, as noted above, the stay provisions are so broad that there can be no doubt picketing is necessarily included within the prohibition against "any act". The bankruptcy court has merely determined that Section 362(a) is applicable, Congress has decided that the activity in issue here is impermissible and must stop.

The cases relied upon by the court of appeals are inapposite. In neither *Truck Drivers Local Union No. 807, International Brotherhood of Teamsters v. The Bohack Corporation,* 541 F.2d 312 (2d Cir. 1976), *cert. denied,* 439 U.S. 825 (1978) nor *In Re Third Avenue Transit Corp., et al., Lehman, et al. v. Quill, et al.,* 192 F.2d 971 (2d Cir. 1951) could the court have considered the effect of the Norris-LaGuardia Act on a congressionally mandated, or automatic, stay because the bankruptcy law at the time of those decisions did not contain an automatic stay that could be applied to the conduct at issue. Prior to enactment of the current bankruptcy law, the broadest automatic stay available was limited to a stay of the commencement or continuation of a court "action" against the debtor or the enforcement of a judgment against him. Bankruptcy Rules, Rule 401. Neither *Bohack* nor *Third Ave. Transit* involved an "action" or enforcement effort, and, consequently, there was no question of applicability of an automatic stay. Instead, at issue was merely the jurisdictional authority of a bankruptcy court to issue its own injunctive relief in a "labor dispute."

C. *The Norris-LaGuardia Act, Applicable Only to "Courts of The United States," Does Not Preclude Action By the Bankruptcy Court.*

Both the district court and the court of appeals erroneously assumed the bankruptcy court to be a "court of the United States" subject to the prohibitions of Norris-LaGuardia. The jurisdictional limitation of the Norris-LaGuardia Act is expressly addressed to "courts of the United States." See 29 U.S.C. §§101, 104. As defined by that statute, a "court of the United States" is "any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress . . . ." 29 U.S.C. §113. Historically, the phrase "court of the United States" has been construed as applicable only to Article III courts. *See Mookini v. United States,* 303 U.S. 201 (1938); *McAllister v. United States,* 141 U.S. 174 (1891); *United States v. George,* 625 F.2d 1081 (3d Cir. 1980). The bankruptcy court, however, is not an Article III court, but rather is a legislative court created pursuant to the congressional authority contained in Article I of the constitution. *Marathon Pipeline Co. v. Northern Pipeline,* 12 B.R. 946 (D. Minn. 1981). *prob. juris. noted,* ____ U.S. ____ 50 U.S.L.W. 3375 (1981); *see* also H.R. Rep. No. 95-595, 95th Cong. 1st Sess. (1977), 63-87. Thus, as an Article I court, the bankruptcy court does not fall within the traditional definition of "courts of the United States."

That the Norris-LaGuardia Act was intended to be limited in its application to Article III courts was the holding in the only court of appeals decision found specifically addressing this point. In *International Longshoremen's Etc., Union v. Wirtz,* 170 F.2d 183 (9th Cir. 1948), *cert. denied,* 336 U.S. 919 (1949), the Court expressly held that the phrase "court of the United States," as used in 29 U.S.C. §113, is limited to Article III courts. Among the authorities cited for this conclusion was a report offered by Congressman LaGuardia which provided:

> The Constitution of the United States in Article III, Section I, provides:
>
> > The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish.
>
> The provisions of the bill are *expressly limited* (See 13(d)) to courts whose jurisdiction has been or may be conferred by the Congress, *under the foregoing provision of the Constitution.*

170 F.2d at 185 (emphasis added). In contrast, when Congress intends to prohibit action by all courts, rather than merely Article III "courts of the United States," it does so by expressly applying its prohibition to "any courts"; Congress, with respect to the Norris-LaGuardia Act, simply chose not to go that far. *See Matter of Becker's Motor Transp. Inc.*, 632 F.2d 242 (3d Cir. 1980) (comparing prohibitory language of 26 U.S.C. §7421(a), "any court," with language of 28 U.S.C. §2201, "courts of the United States," finding bankruptcy courts within the former description but not the latter).*

The legislative scheme of the Bankruptcy Code itself evidences a congressional understanding that bankruptcy courts are not generally considered "courts of the United States." Section 451, Title 28, U.S. Code, defines "court of the United States," for purposes of that title, as "any court created by Act of Congress the judges of which are entitled to hold office during good behavior." 28 U.S.C. §451. That this does not include bankruptcy courts is apparent from the amendment passed by Congress enlarging the definition of "court of the United States" to expressly include bankruptcy courts;

---

*Although cases such as *Bohack* and *Third Ave. Transit* have held the Norris-LaGuardia Act applicable to bankruptcy courts, they did so without any discussion, and apparently analytical consideration, of the scope of the phrase "court of the United States."

however, that amendment does not take effect until 1984. Thus, Congress was aware that the bankruptcy courts it was creating did not fall within generally accepted notions of "courts of the United States."

II

Under basic concepts of statutory construction, the courts below erroneously limited the scope of the bankruptcy court's jurisdiction.

Even assuming the bankruptcy court constitutes a "court of the United States" under the Norris-LaGuardia Act, and the order in controversy is viewed as an affirmative judicial injunction, the courts below nonetheless erred in finding the Norris-LaGuardia Act a limitation on the bankruptcy court's jurisdiction. As the later enacted legislation, priority should have been afforded the Bankruptcy Code. The courts below failed, however, to give it this priority for two distinct reasons, neither of which is applicable here.

The district court observed that the general rules of construction with respect to enactment priority do not govern because the Bankruptcy Code is a "general" statute and the Norris-LaGuardia Act is a "narrow" legislative enactment. In reality, however, it is not possible to justify that relative classification of the two acts. Both are, to the same degree, specific in nature, addressing particular situations, *i.e.*, bankruptcy and labor disputes. Neither is a statute of general applicability. Thus, this construction principle should not have been the determining factor in the court's decision; rather the intent of Congress, as expressed in the Bankruptcy Code, should have governed.

The court of appeals rested its determination on the mere absence of any express reference to the Norris-LaGuardia Act in the Bankruptcy Code's legislative history, finding the

omission "self-evident proof that Congress never intended to supersede or transcend [the Norris-LaGuardia Act], since we cannot believe the Norris-LaGuardia Act was to be superseded, *sub silentio.*" (A-5). The court of appeals, however, failed to recognize the comprehensive nature of the Bankruptcy Code. The Bankruptcy Code represents just that: a *codification* of the federal law of bankruptcy 11 U.S.C. § 101. However, whether viewed as an actual "code" or merely a comprehensive revision of the bankruptcy law, the applicable rule of construction is virtually identical:

> The intent to repeal all former laws upon a subject is made apparent by the enactment of subsequent comprehensive legislation establishing elaborate inclusions and exclusions . . . Legislation of this sort which operates to revise the entire subject to which it relates, by its very comprehensiveness gives strong implication of a legislative intent not only to repeal former statutory law upon the subject, but also to supersede the common law relating to the same subject. 1A Sands, *Sutherland Statutory Construction*, § 23.13, at p. 238.
>
> * * *
>
> The enactment of a code on any subject contemplates a comprehensive and complete body of law designed to function within the bounds of its expressed limitations as the sole regulatory law on the subject to which it relates.
>
> The provisions of a code are liberally interpreted to effectuate the purpose and to achieve the objects of their enactment.
>
> The enactment of a code operates to repeal all prior laws upon the same subject matter where, because of its comprehension, it inferentially purports to be a complete treatment of the subject . . . . *Id.* at § 23.14, at p. 242.

The court of appeals expressed its disbelief that Congress could have intended the Norris-LaGuardia Act to be rendered inapplicable here *sub silentio. But see Local 455 v. Kevin Steel Products, Inc.*, 519 F.2d 698 (2d cir. 1975) (holding Section 313(1) of the former Bankruptcy Act controlled over Section 8(d) of the National Labor Relations Act, 29 U.S.C. § 158(d)). However, it is equally hard to believe — if not more so — that Congress pieced together a statute with the thoroughness of this bankruptcy legislation only to leave in it a gap capable of defeating its very raison d'etre: the equal protection of all creditors. This Court has before recognized that absent a clear congressional indication, it will not read into legislation "glaring loopholes" in the very objective that legislation seeks to achieve. *See Connell Construction Co., Inc. v. NLRB*, 421 U.S. 616, 633 (1975).

Nowhere is the pervasive nature of the Bankruptcy Code more apparent than with respect to the scope of the bankruptcy court's jurisdiction. 28 U.S.C. § 1471 now provides that the bankruptcy court shall "have original but not exclusive jurisdiction of all civil proceedings arising under Title 11 or arising in or related to cases under Title 11." The House Report expands upon the obvious intention expressed by this provision:

> Subsection (b) is a significant change from current law. It grants the bankruptcy court original (trial), but not exclusive, jurisdiction of all civil proceedings arising under title 11 or arising under or related to cases under title 11. *This is the broadest grant of jurisdiction* to dispose of proceedings that arise in bankruptcy cases or under the bankruptcy code. Actions that formerly had to be tried in State court or in federal district court, at great cost and delay to the estate, may now be tried in the bankruptcy courts.
>
> The jurisdiction granted is of all proceedings arising under title 11 or arising under or related to a case under title 11.

> The bill uses the term "proceeding" instead of the current "matters and proceedings" found in the Bankruptcy Act and Rules. The change is intended to conform the terminology of title 28, under which anything that occurs within a case is a proceeding. *Thus, proceeding here is used in its broadest sense,* and would encompass what are now called contested matters, adversary proceedings, and plenary actions under the current bankruptcy law. It also includes any disputes related to administrative matters in a bankruptcy case.
>
> *The phrase "arising under" has a well defined and broad meaning in the jurisdictional context. In sum, the combination of the three bases for jurisdiction, "arising under title 11," "arising under a case under title 11," and "related to a case under title 11," will leave no doubt as to the scope of the bankruptcy court's jurisdiction over disputes.*

H.R. Rep. No. 95-595, 95th Cong. 1st Sess. (1977), 445-46 (emphasis added).

Congress recognized that its new bankruptcy legislation provided extremely broad coverage and might, therefore, impact upon labor issues. Whenever Congress felt the policies underlying these labor issues warranted priority, they were given priority by express limitations on the bankruptcy courts' powers. Thus, for example, under Section 365 of the Bankruptcy Code, a trustee, with court approval, may reject any executory contract, including a collective bargaining agreement. An exception to this rule appears in Section 1167, providing that "neither the court nor the trustee may change the wages or working conditions of employees of the debtor established by a collective bargaining agreement that is subject to the Railway Labor Act (45 U.S.C. 151 *et seq.*) except in accordance with section 6 of such Act (45 U.S.C. 156)." The House Report aptly illustrates congressional sensitivity to labor matters, noting that "[t]he subject of railway labor is too delicate and has too long a history for this code to upset established relationships. This provision continues that balance

unchanged." H. Rep. No. 95-595, 95th Cong., 1st Sess. (1977) 428. Congress did not see fit to make a similar accommodation with respect to other types of collective bargaining agreements, and there is little question that Section 365 permits their rejection. *See, e.g., In Re David A. Rosoa, Inc.*, 9 B.R. 190 (Bank. Ct.D. Conn. 1981).

Similarly, Congress, in making a grant of jurisdiction coextensive with its constitutional power, tellingly failed to exclude "labor disputes" from its scope. Congress recognized that in the absence of Section 1167, the provisions of Section 6 of the Railway Labor Act would be repealed impliedly and it chose to alter that effect. Congress must also be recognized as knowing Section 362 worked as a limited repeal of the Norris-LaGuardia Act, and it chose to do nothing about it. As a recent commentator has noted:

> Congress intended that the only limits on federal court jurisdiction in bankruptcy matters should be those established by the Constitution. The [Bankruptcy Code's] grant of subject matter jurisdiction confers on the . . . courts' "original but not exclusive jurisdiction of all civil proceedings arising under title 11 or arising in or related to cases under title 11." The [Bankruptcy Code's] legislative history leaves no doubt that this open-ended language should receive the most expansive reading possible.

Note, *Bankruptcy and the Limits of Federal Jurisdiction*, 95 Harv. L.R. 703, 706 (1982). Clearly, this "grant of jurisdiction in cases 'related to' bankruptcy proceedings is an unprecedented departure from previous practice." *Id.* at 713. There simply is no basis for concluding Congress intended anything other than what it expressly provided.

III

The purpose of neither the Norris-LaGuardia Act nor the Bankruptcy Code is served by the decisions below.

Whenever interpreting an act of Congress, a court is charged with giving effect to the intent of Congress. An example of judicial abdication of this responsibility is nowhere clearer than in this case. The district court and the court of appeals have both rejected the clear intent of the Bankruptcy Code in favor of the literal language of the Norris-LaGuardia Act, to ensure a result intended by neither. Moreover, this result has obtained despite the admonition of this Court in prior cases instructing upon the proper interpretation of the scope of the Norris-LaGuardia Act:

> The literal terms of § 4 of the Norris-LaGuardia Act must be accommodated to . . . subsequently enacted provisions. . . . Statutory interpretation requires more than concentration upon isolated words; rather consideration must be given to the total corpus of pertinent law and the policies which inspired ostensibly inconsistent provisions.

Boys Markets, Inc. v. Retail Clerks, 398 U.S. 235, 250 (1970).

Specifically this Court noted:

> The Norris-LaGuardia Act was responsive to a situation totally different from that which exists today. In the early part of this century, the federal courts generally were regarded as allies of management in its attempts to prevent the organization and strengthening of labor unions; and in this industrial struggle the injunction became a potent weapon that was wielded against the activities of labor groups. The results were a large number of sweeping decrees, often issued *ex parte,* drawn on an *ad hoc* basis without regard to any systematic elaboration of national labor policy.

Id. (footnotes and citations omitted).

This was the abuse Congress intended to eliminate, and it is the elimination of this abuse to which the Norris-LaGuardia Act was directed and limited. Recognizing the full extent of jurisdiction Congress literally provided in the Bankruptcy Code in no way "sacrifices" the "core purpose" of the Norris-LaGuardia Act. Application of the Bankruptcy Code's automatic stay does not permit the interjection of the federal judiciary on the side of management in an *ad hoc* manner. Whatever interjection is accomplished by the stay provision is done on a uniform and mandatory basis; the applicability of Section 362(a) cannot be characterized as *ad hoc* since it is not discretionary. It also is naive to view this interjection as "without regard to any systematic elaboration of national labor policy," since it is mandated by the very body charged with the creation and elaboration of national labor policy: Congress. Finally it is inaccurate to view this interjection as being either "on the side" of management or "against" labor organizations. Rather it is protective interjection on behalf of the debtor and all creditors, preserving the estate for all to share in proportionately.

Just as the decisions below fail in any way to promote the objectives of the Norris-LaGuardia Act, they serve to impair the orderly disposition of a debtor's estate Congress intended under the Bankruptcy Code. By granting the union immunity from § 362(a), the lower courts have created, *de facto*, a "superpriority" for the Funds' claims* in that the Funds are

*It must be remembered that the Union is not even the creditor here; rather the wholly distinct Funds are the creditors. The situation is the same as if a union had bargained with an employer to provide free coffee to its employees at lunch time and in the course of providing that coffee, the employer allegedly ran up a debt with the coffee supplier. Thereafter, the employer filed a Chapter 13 petition. The coffee supplier, fearful that it may not collect its full due because of the existence of other creditors, secures the services of the union to picket the employer until full payment is made, regardless of the rights of other creditors. Drawing the analogy closer to this case, the picketing occurs after the employer's obligation to provide coffee has terminated, and after the union has ceased representing the employees.

free to take coercive action against Petrusch to secure payment ahead of their co-creditors. Yet, the Bankruptcy Code does not reflect a congressional intent to create this priority. To the contrary, Section 507 details extensively the expenses and claims which are entitled to priority. Expressly included among those listed are "allowed unsecured claims for contributions to employee benefit plans," *limited,* however, to contributions arising from services rendered within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first. 11 U.S.C. § 507(a)(4). Thus Congress has already granted, expressly, a limited priority for claims of the same nature as those asserted by the Funds. That priority has no applicability here because the allegedly past due contributions pre-date Petrusch's petition by several years. Quite clearly, however, the legislative history of Section 507(a)(4) reveals Congress' intent to keep the priority within the specific limits it expressed:

> Paragraph a overrules *United States v. Embassy Restaurant,* 359 U.S. 29 (1958), which held that fringe benefits were not entitled to wage priority status. The bill recognizes the realities of labor contract negotiations, where fringe benefits may be substituted for wage demands. *The priority granted is limited to claims for contributions to employee benefit plans such as pension plans, health or life insurance plans, and others, arising from services rendered within [180] days before the commencement of the case. . . .*

S. Rep. No. 95-989, 95th Cong. 2d Sess. (1978), 69 (emphasis added). Nor does the Norris-LaGuardia Act's legislative history provide any basis for claiming Congress intended to provide a union-creditor, or a creditor supported by the picketing power of a union, additional priority rights in a bankruptcy context.

On balance, the decisions below do nothing to promote the policies of the Norris-LaGuardia Act, yet do substantial damage to a very significant, and recent piece of federal bankruptcy legislation.

CONCLUSION

To view this case as pitting a labor organization against an employer, as urged by the union below and accepted by those courts, is to ignore the more accurate and significant relationship present here: that of debtor and creditor (and creditor's agent). When so viewed, the fallacy of conclusions reached below appears strikingly, as does the disservice those decisions work upon the Legislature's Bankruptcy Code. The proper accommodation of the Norris-LaGuardia Act and the Bankruptcy Code is obviously a question in respect of important matters of federal law which has a significant impact and, therefore, this Court should grant this petition, take jurisdiction of this case, and review the questions presented.

Respectfully submitted,

Robert W. Kopp
Louis P. DiLorenzo
John Gaal

BOND, SCHOENECK & KING
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Syracuse, New York 13202
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Appendix

OPINION OF U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT, DATED DECEMBER 15, 1981

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 599— September Term, 1981

(Argued November 13, 1981

Decided December 15, 1981)

Docket No. 81-5055

IN RE: WILLIAM O. PETRUSCH, JR., d/b/a B & L DISTRIBUTION CENTER,

Debtor

WILLIAM O. PETRUSCH, JR., d/b/a B & L DISTRIBUTION CENTER,

Respondent-Appellant

—against—

TEAMSTERS LOCAL 317, Syracuse, NY & NEW YORK STATE TEAMSTERS COUNCIL, HEALTH & HOSPITAL FUND/PENSION RETIREMENT FUND

Petitioners-Appellees

Before:

TIMBERS AND KEARSE, *Circuit Judges,*
and MURPHY, *District Judge.**

Appeal from an order of the District Court for the Northern

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*Honorable Thomas F. Murphy, United States District Judge for the Southern District of New York, sitting by designation.

Opinion of U.S. Court of Appeals for the Second Circuit, Dated December 15, 1981

District of New York, Neal P. McCurn, *District*, staying an order in bankruptcy restraining a labor union from picketing.

Affirmed.

SAMUEL J. COSTA, Syracuse, N.Y. (Grass, Balanoff, Costa & Whitelaw, Syracuse, N.Y., on the brief), *for appellant.*

JAMES R. LaVAUTE, Syracuse, N.Y. (Blitman and King, Syracuse, N.Y., on the brief), *for appellee.*

Per Curiam:

Petrusch, the debtor in a Chapter 13 proceeding, (11 U.S.C. § 1301 *et seq.* (Supp. III 1979)), appeals an order of the District Court for the Northern District of New York staying, pending appeal to this Court, an injunction by a Bankruptcy Judge restraining appellee labor union, Teamsters Local 317, from picketing his place of business in a labor dispute. The District Judge, in a reasoned opinion, held that the Bankruptcy Court was without subject matter jurisdiction because the Norris-La Guardia Act, 29 U.S.C. § 101 *et seq.*, expressly prohibited such injunctions by any United States court. We agree, and affirm.

This appeal therefore, presents the issue whether the Automatic Stay section of the Bankruptcy Reform Act of 1978 (11 U.S.C. § 362), upon which the Bankruptcy Judge relied, supersedes *pro tanto* the historic Norris-La Guardia Act, 29 U.S.C. § 104) provides:

> "No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or

interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

* * * *

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute; . . . ."

Thirty years ago almost to the day this Court struck down a similar injunction issued in a Chapter X proceeding under the Bankruptcy Act of 1898 (11 U.S.C. § 501 *et seq.* (1976)), involving a threatened union strike of the Third Avenue Transit Corporation which served a million and a half passengers a day. Citing Mr. Justice Frankfurter's concurring opinion in *United States* v. *United Mine Workers of America,* 330 U.S. 258, 313-14, 320 n.6 (1947), we held: "Both the language and the purposes of that statute [Norris-LaGuardia Act] . . . forbids such a conclusion. The well established power of the reorganization court to issue orders necessary to conserve the property in its custody must be exercised within the scope of a jurisdiction which is limited by the broad and explicit language of the Norris-La Guardia Act." *In Re Third Ave. Transit Corp., et al., Lehman, et al.* v. *Quill, et al.,* 192 F.2d 971, 973 (2nd Cir. 1951).

More recently, in *Truck Drivers Local Union No. 807, International Brotherhood of Teamsters* v. *The Bohack Corporation,* 541 F.2d 312 (2nd Cir. 1976), *cert. denied,* 439 U.S. 825 (1978), also decided under the Bankruptcy Act of 1898, we issued the extraordinary writ of mandamus to the District Judge to vacate his order restraining the union from engaging

in actions protected by Section 4 of the Norris-La Guardia Act, saying that "the district court did not have jurisdiction, . . . to enjoin the picketing or other lawful union activity, and hence [we] will grant the writ of mandamus to the district court to dissolve any such order." *Id.* at 318.

Petrusch contended before the district court that there was no labor dispute between him and the union but only an attempt by the union to collect a pre-petition debt for the Teamsters' funds. The Court correctly disposed of this contention by holding that Petrusch was obliged, by the terms of the collective bargaining agreements between the parties, to make fringe benefit payments to the Teamsters' Health and Hospital Fund and their Pension and Retirement Fund. Because such obligation is part of the terms and conditions of employment, it fits squarely into the Norris-La Guardia Act's definition of a labor dispute. 29 U.S.C. § 113(c), defining a labor dispute, includes "any controversy concerning terms or conditions of employment, . . . regardless of whether or not the disputants stand in the proximate relation of employer and employee."

The "Automatic Stay" in all voluntary and involuntary bankruptcies as directed in Section 362(a) of the Bankruptcy Reform Act attaches upon the filing of the petition and applies to all entities included in 8 subdivisions of activities relating to diverse legal and administrative matters. In § 362(b), 8 situations are delineated where the stay does not attach. Labor disputes or picketing are not mentioned in either subsection.

The purpose of the Automatic Stay is explained in the House Report for the Bankruptcy Reform Act, H.R. Rep. 95-595, 95th Cong., 2d Sess. 340, *reprinted in* [1978] U.S. Cong. and Ad. News 6135, 6296-97:

> "The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the

debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all foreclosure actions. It permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy.

The automatic stay also provides creditor protection. Without it, certain creditors would be able to pursue their own remedies against the debtor's property. Those who acted first would obtain payment of the claims in preference to and to the detriment of other creditors. . . ."

Nowhere in the legislative history of the Bankruptcy Reform Act of 1978 (Report of the Committee on the Judiciary, H.R. Rep. No. 95-595, 95th Cong., 1st Sess., 1977; Notes of Committee on the Judiciary, Sen. Rep. No. 989, 95th Cong., 2nd Sess. 54 *reprinted in* [1978] U.S. Cong. and Ad. News 5788, 5840-41) or in the Report of the Commission on the Bankruptcy Laws of the United States (H.R. Doc. No. 93-137, 93rd Cong., 1st Sess., 1973) is any reference made to the Norris-La Guardia Act. Such omissions are to use self-evident proof that Congress never intended to supersede or transcend it, since we cannot believe the Norris-La Guardia Act was to be superseded, *sub silentio*.

Concern for the preservation of estates in bankruptcy and prevention from interference in their *statu quo* has had a long history and effective remedies bottomed on the concept of *custodia legis*, but with exceptions and limitations. "It is as true of the present law as it was of that of 1867, that the filing of a petition is a *caveat* to all the world, and in effect an attachment and injunction, ..." *Mueller* v. *Nugent*, 184 U.S. 1, 14 (1902); *cf., Ex Parte Baldwin, et al.*, 291 U.S. 610, 615 (1934). Congress, pursuant to its constitutional powers, carved out an exception in labor disputes by withdrawing jurisdiction of all United States courts. Art. III, Sec. 1.

ORDER TO SHOW CAUSE & TEMPORARY RESTRAINING ORDER

U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE: WILLIAM O. PETRUSCH, JR. d/b/a B & L Distribution Center

Debtor

WILLIAM O. PETRUSCH, JR. dba B & L Distribution Center,

Petitioner

vs.

TEAMSTERS LOCAL 317, Syracuse, NY and NEW YORK STATE TEAMSTERS COUNCIL, HEALTH & HOSPITAL FUND/PENSION & RETIREMENT FUND

Respondents

Case #80 00987

AT: Utica, New York in said District on the 27 day of August, 1981.

Upon the petition of the debtor herein, the affidavits of William O. Petrusch and debtor's attorneys both duly sworn to August 26, 1981 and filed herein; and upon all the other papers filed in the proceedings had herein, let the Respondents, Teamsters Local 317 and the Teamsters Council Health & Hospital Fund and Pension & Retirement Fund SHOW CAUSE before this Court at the Federal Court House on S. Clinton St., in Syracuse, New York on September 1, 1981 at 10:00 A.M. or as soon thereafter as counsel can be heard, why the aforesaid Respondents should not be required to comply with 11 USC §362 (a); and it is further

Order to Show Cause &
Temporary Restraining Order

ORDERED that pending the hearing and determination of the application herein, the Respondents herein be and are hereby enjoined and restrained from the commencement or continuation including the issuance or employment of process, of a judicial, administrative or other proceeding including picketing against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title until further notice of this Court; and it is further

ORDERED that the service of this Order and the papers upon which it is based, be made on or before August 31, 1981 by certified mail return receipt requested upon the respondents at their place of business, and that Warren Blasland, Trustee for debtor herein be also served with notice of the proceedings herein, be deemed sufficient service.

ENTER 8-27-81

/s/ LEON J. MARKETOS
U.S. Bankruptcy Judge

AFFIDAVIT OF WILLIAM O. PETRUSCH

U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE: WILLIAM O. PETRUSCH, JR. d/b/a B & L Distribution Center

Debtor

WILLIAM O. PETRUSCH, JR. dba B & L Distribution Center,

Petitioner

vs.

TEAMSTERS LOCAL 317, Syracuse, NY

Respondents

Case #80 00987

STATE OF NEW YORK }
COUNTY OF ONONDAGA } ss.:

WILLIAM O. PETRUSCH, being duly sworn, deposes and says that:

1. He is the principal of the debtor's business herein and fully familiar with the facts and circumstances therein.

2. An automatic stay pursuant to 11 USC 362 (a) took effect on the filing of the debtor's Chapter 13 petition with this Court on July 11, 1980 and subsequently an order of confirmation was entered on or about November 1, 1980.

3. Your deponent is also the current manager and former officer of W B & L Trucking & Cartage Co. Inc. (a New York Corporation) which received a mailgram dated July 17, 1981 from Respondents and annexed hereto as Exhibit B. As can be seen, the aforesaid communication advised the corporation of an alleged arrears pertaining to the Teamsters Pension and

Retirement Fund and Health & Hospital Fund. It must be noted that the Corporation is a distinct business entity from the debtor herein.

4. When the aforesaid alleged arrears was not paid as directed by the terms of the mailgram, Teamsters Local 317 began picketing both the Corporation and the debtor's business.

5. The picketing continues to date and has expanded to include debtor's customers thereby resulting in a drastic reduction in income and potential total termination of debtor's business. Among the debtor's customers to be picketed were Omega Wire of Williamstown, New York, Crouse-Hinds of Syracuse, New York and Bowman Transportation, Syracuse, New York.

6. It is your deponent's belief that should the pickets continue the debtor not only will not be able to comply with the requirements of the Chapter 13 Plan, but undoubtedly will be forced to close its doors permanently.

7. Further, your deponent wishes to point out that the claims outlined in the Respondents' mailgram were also the subject of an action commenced by the Respondents against the corporation W B & L Trucking & Cartage Inc. in 1978. The corporation interposed its answer and the action has not progressed from that stage. (Exhibit A).

8. It is your deponent's contention that the Respondents have no meritorious claim against the debtor. However even assuming that the claim could be prosecuted against debtor, any action by Respondents would automatically be stayed as a pre-petition debt pursuant to 11 USC §362(a).

WHEREFORE, it is respectfully requested that the court stay respondents from the commencement or continuation

including the issuance or employment of process, of a judicial, administrative or other proceeding including picketing against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title pending the hearing and determination of debtor's application herein as well as such other and further relief as to this Court may seem just and proper.

/s/ WILLIAM O. PETRUSCH

Sworn to before me this 26 day
of August, 1981.

/s/ SAMUEL J. COSTA
Notary Public

AFFIDAVIT OF SAMUEL J. COSTA

U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE: WILLIAM O. PETRUSCH, JR. d/b/a B & L Distribution Center

Debtor

WILLIAM O. PETRUSCH, JR. dba B & L Distribution Center,

Petitioner

vs.

TEAMSTERS LOCAL 317, Syracuse, NY

Respondents

Case #80 00987

STATE OF NEW YORK }
COUNTY OF ONONDAGA } ss.:

SAMUEL J. COSTA, being duly sworn, deposes and says that:

1. He is a member of the firm of Grass, Balanoff, Costa & Whitelaw and maintains an office for the practice of his profession at One Lincoln Center, Syracuse, New York and is fully familiar with the facts contained herein.

2. That as is evident from the annexed affidavit of the debtor and exhibits attached, the actions of the respondents are critically impairing the ability of the debtor to continue his business and comply with the requirements of the confirmed Chapter 13 plan.

3. The respondents are apparently attempting to coerce the alleged obligation from the debtor through labor tactics (i.e. picketing) when same could not be achieved through litigation (see Exhibit A).

4. Even presuming that the debtor is liable for the alleged obligation of the corporation as the respondents contend, the aforesaid debt is unquestionably pre-petition and therefore subject to the automatic stay provision of 11 USC 362(a).

WHEREFORE, it is respectfully requested that the court stay respondent from the commencement or continuation including the issuance or employment of process, of a judicial, administrative or other proceeding including picketing against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title pending the hearing and determination of debtor's application herein as well as such other and further relief as to this Court may seem just and proper.

/s/ SAMUEL J. COSTA

Sworn to before me this 26 day of
August, 1981.

/s/ BETH I. JACKSON
Notary Public

BETH I. JACKSON
Notary Public in the State of New York
Qualified in Onondaga Co. No. 4659104
My Commission Expires March 30, 1983

EXHIBIT A — COMPLAINT

U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

NEW YORK STATE TEAMSTERS CONFERENCE, PENSION AND RETIREMENT FUND

and

NEW YORK STATE TEAMSTERS COUNCIL, HEALTH AND HOSPITAL FUND

Plaintiffs

against

B & L TRUCKING & CARTING CO., INC.,

Defendants

The Plaintiffs, for their complaint against Defendant, through their attorney PETER P. PARAVATI allege as follows:

1. That the Plaintiff Funds herein exist pursuant to declarations of trust and were created to provide various pension, and other benefits to employees represented by participating Teamster local Unions.

2. That the offices for both the Plaintiffs herein is maintained and operated at 7 Rutger Park, in the City of Utica, County of Oneida, New York.

3. That the defendant does business in and about the State of New York, including E. Syracuse, New York and defendant is a (domestic) (corporation) with its principal office for the transaction of business at E. Syracuse, New York.

4. That defendant executed labor bargaining agreements with Teamster local unions and signed the Stipulation Agreements of Plaintiffs whereby Defendant agreed to pay contributions to Plaintiff Funds on behalf of employees covered by the

Agreements in order to provide employees of Defendant with certain Pension and Welfare benefits. Said Stipulation Agreements are attached hereto and made a part hereof.

5. That the Defendant violated the aforesaid Agreements and Stipulations (Copies of which are in the possession of the Defendant) by failing to make contributions as required by said Agreements.

6. That, pursuant to the terms of said Agreements, the plaintiffs demanded and the defendants consented to an audit of its Books and Records to determine if the contractually required contributions had been paid to the plaintiffs for the employees of defendant under and by said Agreements.

9. That an official copy of that audit was furnished to the defendant and that said audit provides the names of the employees and the amount of contributions, which, during the period covered by the audit, defendant failed to pay plaintiffs, in violation of said Agreements.

10. That the audit discloses that the Defendant owe Plaintiff Pension and Retirement Fund the sum of $2377.57 and that Defendant owes the Plaintiff Health and Hospital Fund the sum of $2357.28. That defendant is also liable to and owes plaintiff the sum of $480.00 as the cost of service for audit.

11. Despite the demand of Plaintiffs herein Defendant has refused and failed to pay the plaintiffs the amounts hereinabove stated.

12. That this complaint has been framed in the manner presented for the following reasons: The issues of fact and law are the same for all three parties concerned; the two plaintiffs have the same administrator; the two plaintiffs maintain an office in the same Teamsters building; the two plaintiffs furnish the same "Employer Report" form to the defendant and

similar other employers upon which they set down the names of the employees on whose behalf they pay to the plaintiffs the required contributions; the obligations and rights of all the parties herein flow from the same contracts and stipulations signed by them; to encourage the economy of time and effort and judicial resources; and to further the liberality and modernity of pleadings in lawsuits — all without inflicting an injustice on anyone.

WHEREFORE the plaintiffs demand judgment against the Defendant(s) as follows:

(a) For Plaintiff Pension and Retirement Fund the Sum of $2377.57 representing the contributions and 10% penalty due said Fund.

(b) For Plaintiff Health and Hospital Fund the Sum of $2357.28 representing the contributions and 10% penalty due said Fund.

(c) Audit fees incurred herein in the Sum of $480.00

(d) Attorney fees of Plaintiffs to be fixed by this Court

(e) The costs and disbursements of this Action

(f) Such other and further relief as to this Court may seem just.

Dated: Utica, New York
May 2, 1978

PETER P. PARAVATI
Attorney for Plaintiffs
217 Rutger St.,
Utica, N.Y. 13501
(315) 735-6481

EXHIBIT B—WESTERN UNION MAILGRAM TO WILLIAM PETRUSCH FROM TEAMSTERS LOCAL 317

WU Mailgram

TEAMSTERS LOCAL 317 K HICKMAN
PO BOX 37 SALINA STATION
SYRACUSE NY 13208

4-075711S198003 07/17/81 ICS IPMMTZZ CSP SYRE
2 3157414164 MGM TDMT SYRACUSE NY 07-17 0855P EST

►

WILLIAM PETRUSCH PRESIDENT
B & L TRUCKING
911 EAST HIAWATHA BLVD
SYRACUSE NY 13208

THIS IS A CONFIRMATION COPY OF A PREVIOUSLY PHONE-DELIVERED TELEGRAM

IT IS OUR FIRM CONVICTION THAT, EVEN IN THE ABSENCE OF YOUR SIGNITURE ON THE CURRENT NATIONAL MASTER FREIGHT AGREEMENT AND LOCAL SUPPLEMENT, YOU ARE HELD RESPONSIBLE TO COMPLY WITH ALL PHASES OF THE AGREEMENT AND SUPPLEMENT IN COMPLIANCE WITH ARTICLE 39 IN ITS ENTIRETY.

FURTHER, AFTER NUMEROUS NOTICES TO YOU ON OUR DELINQUENCY ON THE HEALTH AND HOSPITAL AND PENSION FUND CONTRIBUTIONS, WHICH YOU HAVE CHOSEN TO IGNORE TOTALLY, THIS WILL ADVISE YOU THAT LOCAL 317 WILL TAKE WHATEVER ACTIONS NECESSARY TO INSURE YOUR COMPLIANCE WITH THE CONTRACT PROVISIONS AND APPLICABLE STIPULATIONS.

THEREFORE, UNLESS ALL DELINQUENT MONIES OWED TO THE NEW YORK STATE TEAMSTERS

EXHIBIT B—Western Union Mailgram to William Petrusch from Teamsters Local 317

COUNCIL HEALTH AND HOSPITAL FUND AND THE NEW YORK TEAMSTERS CONFERENCE PENSION AND RETIREMENT FUND ARE PAID IN FULL BY FRIDAY JULY 24, 1981 4PM WE WILL TAKE WHATEVER ACTION DEEMED NECESSARY UP TO AND INCLUDING BUT NOT LIMITED TO STRIKE ACTION

TEAMSTERS LOCAL 317 EVERETT L CAMPBELL
SEC TREAS & PRINCIPAL EXEC OFFICER
(PO BOX 3 SALINA STA SYRACUSE NY 13208)
PO BOX 37 SALINA STATION
SYRACUSE NY 13208

2102 EST

MGMCOMP MGM

ORDER OF BANKRUPTCY JUDGE LEON J. MARKETOS DATED SEPTEMBER 22, 1981

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

IN RE: WILLIAM O. PETRUSCH, JR. d/b/a B & L Distribution Center

Debtor

—

WILLIAM O. PETRUSCH, JR. d/b/a B & L Distribution Center,

Petitioner

vs.

TEAMSTERS LOCAL 317, Syracuse, New York; N.Y. STATE TEAMSTERS CONFERENCE PENSION & RETIREMENT FUND, Utica, New York; and N.Y. STATE TEAMSTERS COUNCIL HEALTH & HOSPITAL FUND, Utica, New York,

Respondents

Petition No. 80-00987

AT: Utica, New York in said district on the 22nd day of September, 1981.

The debtor having brought on by order to show cause a proceeding returnable before this court on September 1, 1981, for an order for relief against the respondents TEAMSTERS LOCAL 317, N.Y. STATE TEAMSTERS CONFERENCE PENSION & RETIREMENT FUND, and N.Y. STATE TEAMSTERS COUNCIL HEALTH & HOSPITAL FUND, invoking the automatic stay provisions of 11 USC Section 362

Order of Bankruptcy Judge Leon J. Marketos, Dated September 22, 1981

and said return date being adjourned until September 8, 1981, at which time a fact finding hearing was duly held before this court,

NOW, on reading and filing the order to show cause and temporary restraining order dated August 26, 1981, with due proof of service thereof, and the application of Samuel J. Costa, Esq., his attorney, dated August 26, 1981, in favor of debtor's application, and upon the responding papers submitted in opposition to debtor's motion by James R. Lavaute, Esq., one of the attorneys for Respondent Teamsters Local 317, and upon all the prior papers and proceedings had and filed in the bankruptcy proceeding, and after hearing Samuel J. Costa, Esq., attorney for the debtor, in favor of said application, and James R. Lavaute, Esq., attorney for respondent Teamsters Local 317, in opposition thereto, and there being no appearance by respondents N.Y. State Teamsters Conference Pension & Retirement Fund and N.Y. State Teamsters Council Health & Hospital Fund, and after hearing the testimony of the debtor, William O. Petrusch, Jr., as part of the fact finding hearing held before this court pursuant to debtor's application, and the court hereby deciding as follows:

FINDINGS OF FACT

1. Debtor has duly filed his Chapter 13 petition with this court on July 11, 1980, and subsequently, an order of confirmation was entered on or about November 1, 1980.

2. That the actions of respondents, including the picketing of debtor's business and customers, have resulted in the debtor being unable to comply with the repayment requirements of his plan.

Accordingly, it is hereby,

Order of Bankruptcy Judge Leon J. Marketos,
Dated September 22, 1981

ORDERED, that the respondents herein be and are hereby enjoined and restrained from the commencement or continuation including the issuance or employment of process, of a judicial, administrative or other proceeding, including picketing the debtor's business or against the debtor's interest, that was or could have been commenced before the commencement of this case under this title, or to recover a claim against the debtor that arose before commencement of the case under this title, until further order of this court.

DATED:

/s/ LEON J. MARKETOS
Bankruptcy Judge

EXCERPTS FROM HEARING BEFORE BANKRUPTCY COURT, DATED SEPTEMBER 8, 1981

JUDGE: This hearing was conducted this afternoon for the purpose of determining two issues as I remember the proposition. Whether or not we had a clear delineation of the operating structure of the debtor as whether he was a corporation or a debtor and whether or not the continuing picketing by the Union here will result in a sufficient damage to the debtor to close him down and make the Chapter 13 not viable. I have listened to the testimony here this afternoon and I am sure that all parties who have listened to this testimony will concede that the debtor has testified forth rightly, frankly and to the best of his ability. It would appear that there are two entities that we are playing with here, or dealing with here I should say. It isn't clear at the moment exactly what the situation is. It would appear that Mr. Petrusch has been involved in the trucking corporation which has one title and that he is also engaged in the warehousing business which is, of course, his claim that it is his separate individual business. The other fact that has been developed here is that we have clearly no employees that are presently being affected so far as the corporate structure is concerned. The employees that are involved here are the employees of Mr. Petrusch as an individual. I think in the nature of the matter before me today that it would be improper for me to lift the TRO at this time because it would result as I can find it from the testimony preliminarily given here today an act which would result in the failure of the Chapter 13 proceeding. There is sufficient evidence in the record to indicate at least preliminarily that a substantial part of the business of the debtor is in the warehousing business is not affected by anything that relates to the trucking business. The exhibits which have been offered here are exhibits that are apparently as I have reviewed them and I don't have them in front of me, where are they, I reviewed them originally, indicate that Mr. Petrusch is president of something, and it looks like the B & L Trucking and Cartage Company entered into stipulations of some nature with the New York State Teamsters Council Welfare Trust Fund. These relate to the years 1974 and the years, I guess they all relate to the years 1974 except for

exhibit 1 which relates to the year 197 , I can't make that year out, it looks like 76. There is also an exhibit here, exhibit 3 which is a letter of intent signed by the same corporate name B & L Trucking and Cartage by Mr. Petrusch and I cannot tell whether there is a designation of a corporate officer status in this signature or not but even if there isn't, I think the Union was dealing with the same corporation. What we have here is I view the pleadings is an attempt by the Teamsters and the Funds in question to collect a debt. I think there is enough in that posture of the situation not involving any rights of individual employees except that insofar as the Funds would affect them eventually to justify the trial of the action here on the issues that have been raised. I think there are issues which haven't been clearly delineated today but they are sufficient to have me continue the Temporary Restraining Order. I understand that there is an action pending and that will have to be tried in a due course. I don't believe that the Union will suffer any damage if the debt is ultimately collected, the beneficiaries of that collection will suffer no loss at that time. On the other hand if the Temporary Restraining Order is lifted at this time I find that it will mean the end of the Chapter 7 and the end of the debtor's ability to reorganize himself. This parenthetically is something that I don't know if it is part of this record or not but it just went through my mind that if this debtor is forced into Chapter 7, I have great doubt in my mind that this debt is a dischargable debt and where does the Union expect to benefit from this procedure. It may be that I am wrong about that but I would like to discuss it with counsel afterwards if they want to discuss it with me but at the same I am going to continue the Temporary Restraining Order until such time as we try the main case here. You may enter an order to that effect. Is there anything further.

COSTA: No Your Honor. Thank you.

JRL: Not on the record in this proceeding Your Honor. I do have a request to make of you but I'll make it . . .

JUDGE: Well, lets go off the record.

MEMORANDUM-DECISION AND ORDER OF U.S. DISTRICT JUDGE NEAL P. McCURN

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

IN RE: WILLIAM O. PETRUSCH, JR. d/b/a B & L DISTRIBUTION CENTER,

Debtor

WILLIAM O. PETRUSCH, JR. d/b/a B & L DISTRIBUTION CENTER,

Petitioner-Appellee,

v

TEAMSTERS LOCAL 317, Syracuse, New York, and NEW YORK STATE TEAMSTERS COUNCIL, HEALTH & HOSPITAL FUND/PENSION & RETIREMENT FUND

Respondents-Appellants.

MISC. # 590

APPEARANCES:

GRASS, BALANOFF, COSTA & WHITELAW; Attorneys for William O. Petrusch, One Lincoln Center, Syracuse, New York 13202

OF COUNSEL:

SAMUEL J. COSTA, ESQ.

BLITMAN AND KING; Attorneys for Teamsters Local 317, 500 S. Salina Street, Syracuse, New York 13202

OF COUNSEL:

JAMES R. LAVAUTE, ESQ., DONALD D. OLIVER, ESQ.

NEAL P. McCURN, D.J.

Memorandum-Decision and Order of
U.S. District Judge Neal P. McCurn

MEMORANDUM-DECISION AND ORDER

This matter comes before this Court on the return of a Show Cause Order, brought by the Respondents-Appellants, Teamsters Local 317 [Union], signed by the Honorable Howard G. Munson, Chief Judge of the Northern District of New York, on September 11, 1981. The Union seeks a stay pending appeal, pursuant to Rule 805 of the Rules of Bankruptcy Procedure,[1] of a Temporary Restraining Order, signed by the Honorable Leon J. Marketos, Bankruptcy Judge of the Northern District of New York, on August 27, 1981, and continued indefinitely by the Order of September 8, 1981. This

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[1]The parties exhibited some confusion as to the precise matter they were arguing before this Court. Attorneys for the Union indicated that they were arguing the appeal itself. The attorney for the Petitioner-Appellee, argued, quite properly, that in that case, the Union had not followed the proper procedure regarding an appeal from a Bankrutpcy Court to the District Court, as set forth in Rules 801, *et seq.* of the Rules of Bankruptcy Procedure.

However, the papers filed by the Union indicate clearly that the Union is seeking a stay of the Bankruptcy Court's injunction insofar as it restrains the Union from picketing debtor's business. The Union did not cite any particular authority to the Court for its power to grant the stay, however, such power is conferred on this Court under Rule 805, cited above.

The argument has also been made by debtor that this Court has no authority to overturn a decision of the Bankruptcy Court's injunction since, in matters of bankruptcy, the district courts and the bankruptcy courts have concurrent jursidiction under 28 U.S.C. §1471. However, this Court is dealing with this matter as an appellate court, under the Rules of Bankruptcy Procedure 801, *et seq.* and 28 U.S.C. §1482. This Court has the power to stay an order or judgment of the Bankruptcy Court, or "other relief pending appeal" as long as such relief was first sought in the Bankruptcy Court. Rule 805. It is clear that the Union first sought a stay of the injunction in respect to picketing in the Bankruptcy Court. The authority of the District Court here can be compared to that of the Circuit Court under Rule 8 of the Federal Rules of Appellate Procedure. *See generally*, 1 Collier on Bankruptcy, ¶3.03, 3-273 to 3-286 (15th Ed. 1980).

Order, *inter alia,* enjoins and restrains the Union from the commencement or continuation of picketing the debtor's business or against the debtor's interest to recover a claim against the debtor that arose before the filing of the debtor's Chapter XIII petition with the Bankruptcy Court. The Union requests a stay of Judge Marketos' Order upon the grounds that the Bankruptcy Court does not have subject matter jurisdiction to issue an injunction regarding picketing in a labor dispute under the terms of the Norris-LaGuardia Act, 29 U.S.C. §101, *et seq.*

I.

The facts giving rise to this litigation are as follows. William O. Petrusch as President of B & L Trucking or B & L Trucking and Cartage, signed several collective bargaining agreements with the Union in 1974 and 1976, covering the years 1974-78 *[See* Exhibits "1", "2" and "3" in the Bankruptcy Court]. Under the terms of those agreements, B & L was obliged to make certain fringe benefit contributions to the Teamsters Health and Hospital and Pension and Retirement Funds [Funds]. In May 1978, the Funds sued B & L for monies allegedly owing under these agreements. [Debtor Exhibit "B"] An answer was interposed denying the obligation, but nothing further has taken place in that action.[2]

On July 11, 1980, Petrusch, d/b/a B & L Distribution Center, filed a Chapter XIII petition in Bankruptcy Court in the Northern District of New York. The petition was subsequently confirmed on or about November 1, 1980. The

[2]This Court agrees wholeheartedly with the Bankruptcy Judge that it is impossible to unravel the various business entities connected with Mr. Petrusch. However, the status of the various companies is not central to the holding on this motion to stay. [See Transcript, 90-92]

Union, apparently, is not on the list of creditors contained in the petition. [Debtor Exhibit "D"]

In July 1981 Petrusch, as President of B & L Trucking received a Mailgram from the Union informing him that, because of the alleged delinquency in Fund fringe benefit contributions, B & L Trucking would be subject to any action Local 317 deemed to be necessary, including picketing. [Debtor Exhibit "C"] When the matter was not resolved, the Union began picketing the Debtor in late July.

On or about August 21, 1981, Petrusch, as President of B & L Distribution Center, filed an unfair labor practice charge with the National Labor Relations Board [NLRB]. He alleged that the picketing by the Union was in violation of 29 U.S.C. §158(b)(4) of the Labor Management Relations Act. Meanwhile, on August 27, 1981, the Debtor obtained an *ex parte* Temporary Restraining Order without notice to the Union from Judge Marketos restraining the Union from picketing the Debtor's business. At the same time, Judge Marketos signed a Show Cause Order as to why the Union should not comply with the automatic stay provision contained in the Bankruptcy Law, 11 U.S.C. §362(a)(6).

The Union filed an affidavit and a memorandum of law with the Bankruptcy Judge in opposition to the Debtor's motion for preliminary injunctive relief, and in support of its motion to vacate the Temporary Restraining Order against picketing.

On September 1, 1981, arguments on the motions were presented to the Bankruptcy Court. Petrusch testified that his business had suffered on account of the picketing, and that its continuance would make compliance with the terms of his bankruptcy petition difficult if not impossible. The Union argued that the Bankruptcy Court lacked subject matter juris-

diction under the Norris-LaGuardia Act to enjoin picketing in a labor dispute. 29 U.S.C. §§101, 104.

At the close of the hearing, the Judge denied the Union's request to dissolve the TRO against picketing, and continued it until further order of the Court. On September 8, 1981, Judge Marketos found that the Debtor had filed a Chapter XIII petition on July 11, 1980, and subsequently an order of confirmation was entered on or about November 1, 1980. The Judge concluded that "the actions of respondents including the picketing of debtor's business and customers, have resulted in the debtor being unable to comply with the payment requirements" of his plan. Accordingly, the Judge enjoined the Union from suing or picketing the Debtor's business until further order of the Court. [Debtor Exhibit "D"].

On September 14, 1981, the Regional Director of the NLRB advised Local 317 by letter that the charge filed by B & L Distribution Center had lacked merit and had been withdrawn. In the interim, the Union applied to this Court for a stay of the injunction against picketing pending appeal.

II.

The Court first addresses the issue of whether the Bankruptcy Court had subject matter jurisdiction to enjoin this picketing. The Norris-LaGuardia Act provides, in pertinent part that

> No court of the United States, as defined in this chapter, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in strict conformity with the provisions of this chapter; nor shall any restraining order or temporary or permanent in-

> junction be issued contrary to the public policy declared in this chapter.

29 U.S.C. §101.

The Act goes on to provide, in regard to the courts' power to enjoin picketing,

> No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such a dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:
>
> * * *
>
> (e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, *patrolling,* or by any other method not involving fraud or violence;
>
> (f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute.

29 U.S.C. §104.

It is clear to this Court that the parties here are involved in a labor dispute, as defined in the Act. A labor dispute is "any controversy concerning the terms or conditions of employment, . . . regardless of whether or not the disputants stand in the proximate relation of employer and employee." 29 U.S.C. §113(c) The Debtor argues here that the Union has no claim against his business, B & L Distribution Center, because this is not the same business entity as B & L Trucking, or B & L Trucking and Cartage. However, the exact business relationship between the parties is irrelevant here. The Union is picketing an entity called B & L Trucking, or B & L Trucking

and Cartage at the given address. B & L Distribution Center is located on the same premises.

Debtor argues additionally that the Union is using the labor law as a smokescreen seeking relief for a matter which is not really a labor dispute, but rather a contract matter involving a prepetition debt. The contract at issue here, however, is admittedly a collective bargaining agreement between union and management as to terms and conditions of employment. In addition, the Court feels constrained to add that the Debtor himself sought refuge behind that very same smokescreen when he filed an unfair labor practice charge against the Union. Under the circumstances present here, the Court finds that the parties are engaged in a labor dispute.

It is also clear that the Bankruptcy Court is a Federal Court within the meaning of the Act. That term is defined as any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress. 29 U.S.C. §113(d).

The Debtor argues that the Bankruptcy Court has the power to enjoin picketing against the Debtor under the automatic stay provision contained in the Bankruptcy Law contained at 11 U.S.C. §362(a)(6). That law provides in pertinent part that the filing of a Bankruptcy petition operates as an automatic stay, applicable to all entities of "any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title."

The Union argues that the automatic stay provision cannot be applied in a way that is contrary to the specific dictates of the Norris-LaGuardia Act which deprives the federal courts of jurisdiction to enjoin picketing. As support, the Union cites the Court to the Second Circuit case of *In re Third Avenue Transit*

Corp., 192 F.2d 971 (2d Cir. 1951). The debtor in that case had filed for reorganization. The Union demanded a reduction in hours with no diminution in wages, and threatened to strike. The Union struck for one day, and the debtor applied to the reorganization court to enjoin the strike. The reorganization court, under its generally recognized power to preserve the assets of the estate, issued an injunction against the strike. The Second Circuit held that the reorganization court had no jurisdiction to enjoin a strike under the Norris-LaGuardia Act, based on their power to preserve the estate. In 1976, the Second Circuit again held that the Norris-LaGuardia Act prevented the Bankruptcy Court from enjoining a union from striking and picketing an employer who was in Bankruptcy, under §301 of the Labor Management Relations Act. 29 U.S.C. §185. *Teamsters Local 807 v. Bohack*, 541 F.2d 312 (2d Cir. 1976), *cert. denied*, 439 U.S. 825 (1978).

The issue now before this Court is whether the Norris-LaGuardia Act will take precedence over the later codification of the Bankruptcy Court's power to preserve the assets of the Debtor's estate. For the following reasons, this Court holds that the later codification of the Bankruptcy Court's power in this regard does not nullify the Norris-LaGuardia Act's jurisdictional limits on the power of the federal courts to enjoin picketing in a labor dispute.

This Court can find no other case where these two provisions have been specifically pitted against each other. However, under basic rules of statutory construction, this Court finds that the specific jurisdictional dictates of the Norris-LaGuardia Act must take precedence over the general power of the Bankruptcy Court. It is a fundamental tenet of statutory construction that a statute dealing with a narrow, precise, and specific subject is not submerged by a later enacted statute

covering a more generalized spectrum, regardless of the priority of the enactment. *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 153, 96 S.Ct. 1989, 1993 (1976); *Morton v. Mancusi*, 417 U.S. 535, 550-51, 94 S.Ct. 2474, 2482 (1974) (and cases cited therein). The rationale behind this rule is that it is presumed that when a legislature turns its mind to the details of a subject and enacts a subsequent statute in general terms treating the subject in a general manner not *expressly* contradicting the original act, that statute shall not be considered to affect the more particular law. *Radzanower v. Touche Ross & Co., supra* at 153, 96 S.Ct. at 1993.

This Court, from an analysis of the test of the law and the legislative history in question, finds no evidence that Congress considered the effect that the automatic stay provision would have on the Norris-LaGuardia Act.[3] At argument counsel for Debtor admitted that he did not find anything specific in his reading of the legislative history of the Act to imply that Congress meant to repeal the Norris-LaGuardia Act by implication or otherwise.

It appears from a transcript of the Bankruptcy Court proceedings that Judge Marketos apparently found authority to enjoin picketing here under the recent Ninth Circuit case of *Local Joint Executive Board v. Hotel Circle, Inc.*, 613 F.2d 210 (9th Cir. 1980). [Transcript 11-15]. However, in the Court's opinion that case cannot be read to give the Bankruptcy Court jurisdiction to enjoin a union from picketing in a labor dispute. That case dealt specifically with the Bankruptcy Court's power to overturn a collective bargaining agreement as an executory contract, and did not involve the Court's power to enjoin

---

[3] *See generally* Appendix 2, 3, Collier's on Bankruptcy [15th Ed 1981] which contains Committee Reports, Senate and House Reports, and Congressional debates on the Bankruptcy Reform Act of 1978.

picketing in contravention of the specific dictates of the Norris-LaGuardia Act. The Union, in fact, readily admits that the Bankruptcy Court *does* have the power to overturn the collective bargaining agreements in question here as executory contracts under 11 U.S.C. §365. *Shopworkers Local 455 v. Kevin Steel Products Inc.*, 519 F.2d 698 (2d Cir. 1975). However, the Second Circuit has specifically held that the power does *not* confer antecedent jurisdiction on the Bankruptcy Court to enjoin picketing in derogation of the Norris-LaGuardia Act. *Truck Drivers Local Union No. 807 v. Bohack Corp., supra* at 318.

The additional arguments advanced by the Debtor in opposition to the stay are without merit. Debtor claims that the Norris-LaGuardia Act has outlived its usefulness as a tool for organized labor, and so should be disregarded by this Court. That issue must be addressed by the legislature. In the absence of a repeal of the Norris-LaGuardia Act, this Court must abide by that law's restrictions on its jurisdiction.

The Debtor also argues that this Court should hold that this case should come under the well reasoned exception of *Boys Markets, Inc. v. Retail Clerks Union Local 770,* 398 U.S. 235, 90 S.Ct. 1583 (1970). In that case the Supreme Court held that if the collective bargaining agreement contains an arbitration clause, the parties may be enjoined until the case is submitted to arbitration. The collective bargaining agreements in issue here specifically hold that this dispute is not arbitrable. [¶2 of Exhibits "1" and "2"]. There is no basis here upon which to apply this narrow exception to the Norris-LaGuardia Act. The Supreme Court has held that the *Boys Markets* case is not to be read to undermine the continuing vitality of the Norris-LaGuardia Act, and this Court feels constrained not to carve out a further exception to that Act under the Bankruptcy Act,

as the Debtor urges us to do. *Boys Markets, Inc., supra* at 253, 90 S.Ct. at 1594.

Finally, the Debtor argues that the Union is acting against its own self interest in that picketing this Debtor will force him out of business, and the Union ultimately will not collect the monies allegedly owing to it. This Court agrees that the wisdom of the Union's action here is open to question on that ground. However, the Second Circuit has specifically held that the Court cannot carve out an exception to the Norris-LaGuardia Act on this basis. In *Bohak, supra,* at 318, the Court observed:

> The argument is made that to allow picketing in the case of this financially troubled debtor is to put it out of business. That is, unfortunately, sometimes the sad outcome when a union and an employer cannot come to terms. But *the policy of our labor laws is simply to provide rules for the handling of labor disputes, not to prohibit the use of economic power in the resolution of such disputes. By filing under Chapter XI an employer does not become clothed in immunity from union action.* As we recognized in *Shopmen's Local Union No. 455 v. Kevin Steel Products, Inc.,* 519 F.2d 698, 89 LRRM 3133 (2d Cir.), *cert. denied,* 423 U.S. 1017, 91 LRRM 2168 (1975), the debtor in a bankruptcy proceeding has other means for release from unlivable conditions in a collective bargaining agreement by petitioning for permission to reject the contract. *But the power to permit rejection of the agreement in particular circumstances does not confer an antecedent jurisdiction on the court to enjoin picketing in spite of the Norris-LaGuardia Act.*

In conclusion, this Court finds that the Bankruptcy Court was without subject matter jurisdiction under the Norris-LaGuardia Act, 29 U.S.C. §101, 104 to issue an injunction

enjoining the Union from picketing in this labor dispute. That injunction against picketing is hereby stayed pending appeal.[4]

It is so Ordered.

/s/ NEAL P. McCURN
U.S. District Judge

U. S. DISTRICT COURT
N. D. OF N. Y.
FILED
OCT 6 1981
J. R. SCHUUY, Clerk
SYRACUSE
N. D. of N. Y.

[4]In so ruling, the Court does not reach the Union's other grounds for a stay.

ORDER OF CHIEF U.S. DISTRICT JUDGE HOWARD G, MUNSON, DATED OCTOBER 7, 1981

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

IN RE: WILLIAM O. PETRUSCH, JR. d/b/a B & L DISTRIBUTION CENTER,

Debtor

WILLIAM O. PETRUSCH, JR. d/b/a B & L DISTRIBUTION CENTER,

Petitioner-Appellee,

v

TEAMSTERS LOCAL 317, Syracuse, New York, and NEW YORK STATE TEAMSTERS COUNCIL, HEALTH & HOSPITAL FUND/PENSION & RETIREMENT FUND

Respondents-Appellants.

MISC. # 590

APPEARANCES:

GRASS, BALANOFF, COSTA & WHITELAW; Attorneys for William O. Petrusch, One Lincoln Center, Syracuse, New York 13202

OF COUNSEL:

SAMUEL J. COSTA, ESQ.

BLITMAN AND KING; Attorneys for Teamsters Local 317, 500 S. Salina Street, Syracuse, New York 13202

OF COUNSEL:

JAMES R. LAVAUTE, ESQ., DONALD D. OLIVER, ESQ.

HOWARD G. MUNSON, C.J.

Order of Chief U.S. District Judge
Howard G. Munson, Dated October 7, 1981

ORDER

Upon a consideration of the petitioner's application for a limited stay of Judge McCurn's decision filed October 6, 1981, I am of the opinion that the ends of justice would best be served if such a stay indeed issued.

Accordingly, it be and hereby is

ORDERED, that the Memorandum-Decision and Order filed by Judge McCurn on October 6, 1981, be stayed until 12:00 noon on October 21, 1981, or until such earlier time when the Second Circuit can rule upon an application for a stay pending appeal.

DATED: October 7, 1981
Syracuse, New York

/s/ HOWARD G. MUNSON
Howard G. Munson
Chief U.S. District Judge

U. S. DISTRICT COURT
N. D. of N. Y.
FILED copy
OCT 8 1981
AT 8:30 O'CLOCK A.M.
J. R. SCULLY, Clerk
SYRACUSE

NOTICE OF APPEAL

U. S. DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

IN RE: WILLIAM O. PETRUSCH, JR. d/b/a B & L DISTRIBUTION CENTER,

Debtor

WILLIAM O. PETRUSCH, JR. d/b/a B & L DISTRIBUTION CENTER

Petitioner

vs.

TEAMSTERS LOCAL 317, Syracuse, New York, and NEW YORK STATE TEAMSTERS COUNCIL, HEALTH & HOSPITAL FUND/PENSION & RETIREMENT FUND,

Respondents

MISC. #590

Notice is hereby given that William O. Petrusch Jr., the debtor above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the Memorandum-Decision and Order rendered by the Honorable Neal P. McCurn, D.J. on October 6, 1981 in which the District Court vacated the stay against the Teamsters' picketing pending the Teamsters' appeal of the bankrupcty order, entered in this action on the 6th day of October 1981.

/s/ SAMUEL J. COSTA
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Syracuse, NY 13202

NOTICE OF MOTION FOR STAY PENDING APPEAL

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETRUSCH

v.

TEAMSTERS LOCAL 317, SYRACUSE, N.Y. ET AL

Docket Number 81-8143

EMERGENCY MOTIONS, MOTIONS FOR STAYS
& INJUNCTIONS PENDING APPEAL

MOTION BY: SAMUEL J. COSTA (315-472-7832).

Has opposing counsel consented? Yes.

Has service been effected? Yes.

Is argument desired? Yes.

Requested return date: October 20, 1981. *(See Second Circuit Rule 27(b)).*

Date of argument of appeal, if scheduled: Not yet scheduled.

Judge or agency whose order is being appealed: N. P. McCurn, D.J. Northern Dist. N.Y.

OPPOSING COUNSEL: JAMES R. LaVAUTE (315-422-7111).

Has request for relief been made below? *(See F.R.A.P. Rule 8.)* Yes.

Would expedited appeal eliminate need for this motion? No.

If no, explain why not: Appellant would still require stay pending appeal determination.

Notice of Motion for Stay Pending Appeal

Brief statement of the relief requested: Appellant seeks stay of appellee's activities including picketing appellant pending appeal determination of District Court order, that vacated the automatic stay provisions of 11 USC §362.

Previous requests for similar relief and disposition: Following District Court's determination on October 9, 1981 against Appellant, the District Court stayed its own order until October 21, 1981 in order to permit Appellant to make application to this Court.

Statement of the issue(s) presented by this motion: Whether District Court had authority or jurisdiction to vacate stay invoked by Bankruptcy Court against appellee pursuant to 11 USC §362.

Whether appellant, as confirmed Chapter 13 debtor, is entitled to protection of automatic stay against the appellee.

Brief statement of the facts *(with page references to the moving papers):* Appellee contends appellant owes monies to the pension funds (not a party here) and seeks to picket appellant and his customers until repaid. Appellant is currently a confirmed Chapter 13 debtor involved in a payment plan and seeks to invoke the automatic stay provisions of 11 USC §362 against the appellee-creditor, as the alleged obligation is actually a pre-petition debt.

Summary of the argument *(with page references to the moving papers):*

1. The District Court was without jurisdiction to vacate the stay granted by Bankruptcy Court as the former was bound by the fact-finding determination of the Bankrupcty Court, a court of co-ordinate jurisdiction (p. 1 & 2). Therefore, the doctrine of the law of the case prevents District Court from vacating stay.

Notice of Motion for Stay Pending Appeal

The Bankruptcy Court has authority to stay all attempts at debt collection even those termed "labor disputes" if the bankruptcy estate is being threatened. (p. 4 & 5).

3. Bankruptcy Court has authority pursuant to 11 USC §105(a) to enjoin appellee's activities (p. 5).

4. The automatic stay provisions of 11 USC §362 is fundamental protection that appellant is entitled and without same, bankruptcy code is meaningless. (p. 6 & 7).

October 14, 1981

/s/ SAMUEL J. COSTA
Samuel J. Costa

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
FILED
OCT 15, 1981
A. DANIEL FUSARO, Clerk

Notice of Motion for Stay Pending Appeal

ORDER

IT IS HEREBY ORDERED that the motion to continue the stay granted by the district court be and it hereby is granted. Further ordered that appellant shall file the record and brief and joint appendix by Oct. 27, 1981; appellee shall file a brief by Nov. 2, 1981; appeal shall be heard during the week of Nov. 9, 1981.

A. DANIEL FUSARO, Clerk

by /s/ EDWARD J. GUARDARO
Edward J. Guardaro, Deputy Clerk

BEFORE: HON. WALTER B. MANSFIELD
HON. ELLSWORTH A. VAN GRAAFEILAND
10-20-81 HON. AMALYA L. KEARSE
Circuit Judges

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
FILED
OCT 20 1981
A. DANIEL FUSARO, Clerk

NOTICE OF MOTION FOR STAY OF ISSUANCE OF MANDATE PENDING APPLICATION FOR WRIT OF CERTIORARI

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

WILLIAM O. PETRUSCH, JR., d/b/a B & L DISTRIBUTION CENTER,

Respondent-Appellant,

—against—

TEAMSTERS LOCAL 317, Syracuse, NY & N.Y.S. Teamsters Council, et al,

Petitioners-Appellees

Docket Number 81-5055

EMERGENCY MOTIONS, MOTIONS FOR STAYS & INJUNCTIONS PENDING APPEAL

MOTION BY: Samuel J. Costa — 472-7832 and Bond, Schoeneck & King — 422-0121.

Has a request of opposing counsel for consent been refused? No.

Has service been effected? Yes.

Is oral argument desired? No.

Requested return date: January 19, 1982. *(See Second Circuit Rule 27(b)).*

Date of Argument of appeal, if scheduled: November 13, 1981.

Judge or agency whose order is being appealed: Judge Munson, U.S. District Court for the Northern District of New York.

Notice of Motion for Stay of Issuance of Mandate Pending Application for Writ of Certiorari

OPPOSING COUNSEL: James LaVaute — 422-7111; Peter P. Paravati — 735-6481.

Has request for relief been made below? *(See F.R.A.P. Rule 8.)* No.

If no, explain why not: Motion for Stay of Mandate Pending Application for Writ of Certiorari.

Brief statement of the relief requested: Stay of issuance of mandate pending application for Writ of Certiorari pursuant to Rule 41 of the Federal Rules of Appellate Procedure and 28 U.S.C. Section 2101(f).

Previous requests for similar relief and disposition: None.

Statement of the issue(s) presented by this motion: Whether good cause exists to grant stay of mandate pending application.

Brief statement of the facts *(with page references to the moving papers):* This Court has recently affirmed a decision of the District Court for the Northern District of New York, staying implementation of a Bankruptcy Court order enforcing the automatic stay provision of 11 U.S.C. Section 362. If that stay is not itself stayed pending application, Respondent-Appellant will suffer irreparable injury as a result of Petitioners-Appellees picketing. (Brief at 4).

Summary of the argument *(with page references to the moving papers):* The apparent conflict between the Norris-LaGuardia Act and the Bankruptcy Code which arises in this action will present the Supreme Court with a substantial and non-frivolous issue for review. (Brief at 5-7).

Notice of Motion for Stay of Issuance of Mandate Pending Application for Writ of Certiorari

The balance of the equities favors the grant of this stay to Respondent-Appellant. (Brief at 3-5).

/s/ SAMUEL J. COSTA
Samuel J. Costa

Jan. 4, 1982 /s/ ROBERT W. KOPP
Robert W. Kopp
Attorney for William O. Petrusch

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
FILED
JAN 05 1982
A. DANIEL FUSARO, Clerk

ORDER

IT IS HEREBY ORDERED that the motion be and it hereby is denied.

/s/ WM. H. TIMBERS
/s/ AMALYA L. KEARSE
/s/ THOMAS F. MURPHY
Circuit Judges

JUDGMENT OF U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT, DATED DECEMBER 15, 1981

UNITED STATES COURT OF APPEALS
for the
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the fifteenth day of December one thousand nine hundred and eighty-one.

HON. WILLIAM H. TIMBERS, HON. AMALYA L. KEARSE, *Circuit Judges;* HON. THOMAS F. MURPHY, *District Judge.*

IN RE: WILLIAM O. PETRUSCH, JR., d/b/a B & L DISTRIBUTION CENTER,

Debtor,

WILLIAM O. PETRUSCH, JR., d/b/a B & L DISTRIBUTION CENTER,

Respondent-Appellant,

v.

TEAMSTERS LOCAL 317, Syracuse, NY & New York State Teamsters Council, HEALTH & HOSPITAL FUND/PENSION RETIREMENT FUND,

Petitioners-Appellees.

#81-5055

Appeal from the United States District Court for the Northern District of New York.

Judgment of U.S. Court of Appeals for the Second Circuit, Dated December 15, 1981

This cause came on to be heard on the transcript of record from the United States District Court for the Northern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is affirmed in accordance with the opinion of this court with costs to be taxed against the appellant.

A. DANIEL FUSARO, Clerk

by /s/ ARTHUR HELLER
Arthur Heller
Deputy Clerk

A TRUE COPY
A. DANIEL FUSARO, Clerk
By /s/ FRANCIS X. GUIDBAIT
Chief Deputy Clerk

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
FILED
DEC 15, 1981
A. DANIEL FUSARO, Clerk

Opposition

Supreme Court, U.S.
FILED
APR 19 1982
ALEXANDER L. STEVAS
CLERK

In The

Supreme Court of the United States

OCTOBER TERM, 1981

No. 81-1719

WILLIAM O. PETRUSCH, JR. d/b/a B & L DISTRIBUTION CENTER,

Petitioner,

— *vs.* —

TEAMSTERS LOCAL 317, SYRACUSE, NEW YORK and NEW YORK STATE TEAMSTERS COUNCIL, HEALTH AND HOSPITAL FUND/PENSION RETIREMENT FUND,

Respondents.

BRIEF OF RESPONDENT TEAMSTERS LOCAL 317 IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	vii
OPINIONS BELOW	1
JURISDICTION	2
STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	2
General Background	2
The Order of the Bankruptcy Court	4
The Decision of the District Court	5
The Decision of the Court of Appeals	5
REASONS FOR DENYING THE APPLICATION FOR WRIT OF CERTIORARI	6
ARGUMENT:	
POINT I — THE COURTS BELOW CORRECTLY DETERMINED THAT THE NORRIS-LAGUARDIA ACT DEPRIVED THE BANKRUPTCY COURT OF JURISDICTION TO RESTRAIN THE UNION'S PICKETING OF PETRUSCH	8
A. The Anti-Injunction Provisions of the Norris-LaGuardia Act Are Clearly Applicable to Bankruptcy Proceedings	8
B. The Bankruptcy Reform Act of 1978 Did Not Supercede the Norris-LaGuardia Prohibition Upon Issuance of Injunctions	15
POINT II — THE ISSUANCE OF THE INJUNCTION HEREIN WAS OTHERWISE IMPROPER	19
A. Petrusch Did Not Satisfy the Burden of Proof Necessary for Obtaining Injunctive Relief	19
B. This Matter is Within the Sole and Exclusive Jurisdiction of the National Labor Relations Board and, Consequently , the Bankruptcy Court Lacked Jurisdiction Over the Subject Matter	21
CONCLUSION	24

TABLE OF CONTENTS TO APPENDIX

	Page
Statutory Provisions Involved	RA1
Agreement, dated June 19, 1974	RA7
Agreement, dated June 1, 1976	RA11
Letter of Intent, dated June 19, 1974	RA15
Agreement, dated June 19, 1974	RA17
Agreement, dated July 10, 1974	RA20
Charge filed with National Labor Relations Board, dated August 21, 1981	RA24
Excerpts from Hearing Before Bankruptcy Court, dated September 8, 1981	RA26

TABLE OF AUTHORITIES

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Alesna v. *Rice*, 69 F.Supp. 897 (D. Hawaii 1947), *inj dissolved* 74 F.Supp. 865 (D Hawaii 1949), *aff'd* 172 F.2d (9th Cir.), *cert. denied*, 338 U.S. 814 (1949) 10

Anderson v. *Bigelow*, 130 F.2d 460 (9th Cir.), *cert. denied*, 317 U.S. 690 (1942) 7, 11

In re Atlantic International Corp, F.Supp. , 101 LRRM 2128 (D. Md. 1979) 23

In re Bel Air Chateau Hospital, Inc., 611 F.2d 1248 (9th Cir. 1979) 23

Boys Markets, Inc. v. *Retail Clerks Union Local 770*, 398 U.S. 235 (1970) 13, 14

Brotherhood of Railroad Trainmen v. *Chicago River & I.R. Co.*, 353 U.S. 30 (1957) 17

Buffalo Forge Co. v. *Steelworkers*, 406 U.S. 397 (1976) .. 14

Church of the Holy Trinity v. *United States*, 143 U.S. 457 (1892) 9

Confectionary Drivers v. *NLRB*, 312 F.2d 108 (2d Cir. 1963) 3

Garner v. *Teamsters Union*, 346 U.S. 485 (1953) 16

Golden State Bottling Co. v. *NLRB*, 414 U.S. 168 (1973) 23

International Brotherhood of Teamsters v. *Quick Charge, Inc.*, 168 F.2d 513 (10th Cir. 1948) 7, 11, 12

Joint Executive Board v. *Hotel Circle*, 613 F.2d 210 (9th Cir. 1980) 18

Local 438, Laborers v. *Curry*, 371 U.S. 542 (1963) 22

Local 761, IUE (General Electric v. *NLRB)*, 366 U.S. 667 (1961) 16

Machinists Lodge 76 v. *Wisconsin Employment Relations Commission*, 427 U.S. 132 (1976) 17

Page(s)

Marine Cooks & Stewards v. *Panama S.S. Co.*, 362 U.S. 365 (1960) 6, 10

Meat Cutters v. *Fairlawn Meats, Inc.*, 353 U.S. 948 (1957) 23

Milk Wagon Drivers' Union v. *Lake Valley Farm Products, Inc.*, 311 U.S. 91 (1940) 6, 10, 17

New Negro Alliance v. *Sanitary Grocery Co.*, 303 U.S. 552 (1938) 6

NLRB v. *Evans Plumbing Company*, 639 F.2d 291 (5th Cir. 1981) 22

Plumbers Union v. *Door County*, 359 U.S. 354 (1959) ... 22

Railroad Telegraphers v. *Chicago & North Western Ry*, 362 U.S. 330 (1960) 7, 10, 17

Railroad Trainmen v. *Toledo, Peoria Western Railroad*, 321 U.S. 50 (1944) 10

San Diego Building Trades Council v. *Garmon*, 359 U.S. 236 (1959) 21,22

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In re Shippers Interstate Service, Inc., 618 F.2d 9 (7th Cir. 1980) 23

Shopmen's Local Union No. 455 v. *Kevin Steel Products, Inc.*, 519 F.2d 698 (2d Cir.), *cert. denied*, 423 U.S. 1017 (1975) 14, 18

Sinclair Refining Co. v. *Atkinson*, 370 U.S. 195 (1962) ... 14

Southport Petroleum Co. v. *NLRB*, 315 U.S. 100 (1942) 23

Steelworkers (Carrier Corp.) v. *NLRB*, 376 U.S. 492 (1964) 16

Teamsters Local 807 v. *Bohack*, 541 F.2d 312 (2nd Cir. 1976), *cert. denied*, 439 U.S. 825 (1978) 7, 13, 14, 15, 17, 18

Page(s)

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Unicon Management Corp. v. *Koppers*, 366 F.2d 199 (2d Cir. 1966) 20

United States v. *Hutcheson*, 312 U.S. 219 (1941) .. 6, 10, 11

United States v. *United Mine Workers*, 330 U.S. 258 (1947) 9, 12

Washington Post Co. v. *Local 6*, 92 LRRM 2961 (D.C. Superior Ct. 1976) 10

CONSTITUTION, STATUTES AND RULES:

Bankruptcy Reform Act ..... passim
11 U.S.C. §113(d) 10
11 U.S.C. §362 ..... 15, 16, 17, 18, 19, 20, 22, 23
11 U.S.C. §362(a) 16, 20
11 U.S.C. §362(b) 22
11 U.S.C. §362(d) 18
11 U.S.C. §362(e) 18
11 U.S.C. §362(f) 18
11 U.S.C. §362(g) 15, 18, 19

Federal Rules of Civil Procedure:
Rule 65 ..... 19, 20

Judiciary and Judicial Procedure:
28 U.S.C. §1471 10

Labor-Management Relations Act:
29 U.S.C. §141 et seq. 13, 21
29 U.S.C. §157 ..... 21, 22, 23
29 U.S.C. §158 ..... 3, 21, 22, 23
29 U.S.C. §160 21

Norris-LaGuardia Act ..... passim
29 U.S.C. §104 ..... 8, 9, 16
29 U.S.C. §113 ..... 4, 10, 12

Page(s)

New York Business Corporation Law:

§301(a)(1) 2

Legislative History:

Congressional Debates - House and Senate, reprinted in App. 3 COLLIER ON BANKRUPTCY (15th ed. 1980) 15

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124 Cong. Rec. H11, 093 (daily ed. Sept. 28, 1978) ... 20

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Treatises:

1 COLLIER BANKRUPTCY MANUAL (3d ed. 1981) 16, 19

Articles:

Nelles, *A Strike and Its Legal Consequences - An Examination of the Receivership Precedent for the Labor Injunction*, 40 Yale L.J. 507 (1931) 9

QUESTIONS PRESENTED

1. Did the Bankruptcy Court have jurisdiction under the Norris-LaGuardia Act, 29 U.S.C. §101 *et seq.*, to enjoin a labor union's picketing of an employer engaged in a labor dispute with that union?

2. Did the Bankruptcy Court otherwise exceed its authority in issuing an injunction?

In The

Supreme Court of the United States

OCTOBER TERM, 1981

No. 81-1719

WILLIAM O. PETRUSCH, JR. d/b/a B & L DISTRIBUTION CENTER,

Petitioner,

— *vs.* —

TEAMSTERS LOCAL 317, SYRACUSE, NEW YORK and NEW YORK STATE TEAMSTERS COUNCIL, HEALTH AND HOSPITAL FUND/PENSION RETIREMENT FUND,

Respondents.

BRIEF OF RESPONDENT TEAMSTERS LOCAL 317 IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

Petitioner seeks review of a decision by the United States Court of Appeals for the Second Circuit which held that, pursuant to the Norris-LaGuardia Act, the Bankruptcy Court was without jurisdiction to enjoin picketing by respondent Teamsters Local 317 [the "Union"] in its labor dispute with petitioner William O. Petrusch, Jr. d/b/a B & L Distribution Center ["Petrusch"] [A-1].1/ The Union opposes the issuance of a writ of certiorari to review the Court of Appeals' decision because the decision below was clearly correct and there is no conflict among the circuits on this issue requiring resolution by this Court.

OPINIONS BELOW

References to the opinions and judgments delivered in the courts below are set forth in the petition at pages 1-2.

1/ References in this form are to pages of the Appendix to the petition; references denoted "RA" are to pages of the Appendix to this brief.

JURISDICTION

The alleged jurisdictional requisites are set forth in the petition at page 2.

STATUTORY PROVISIONS INVOLVED

1. Sections 1, 2, 4, 7 and 13 of the Norris-LaGuardia Act, 29 U.S.C. §§101, 102, 107, and 113 are reprinted at RA1 to 5 of the appendix to this brief.

2. Sections 362(a) and (b) of the Bankruptcy Reform Act of 1978, 11 U.S.C. §§362(a) and (b), are reprinted at RA5 to 6 of the appendix to this brief.

STATEMENT OF THE CASE

At issue in this proceeding is the jurisdiction of the Bankruptcy Court to enjoin picketing in a labor dispute, and whether the injunction was otherwise properly issued. Since injunctive relief is prohibited under the Norris-LaGuardia Act, the preliminary injunction issued by the Bankruptcy Court was properly stayed by the courts below.

General Background

The Union and Petrusch are parties to collective bargaining agreements signed by Petrusch.[2/] Pursuant to its collective

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2/ The agreements were signed by Petrusch individually and not in any corporate capacity. Petrusch's contention that the Union only had a relationship with a corporate entity called "W B & L Trucking and Cartage Co., Inc." is contrary to the record evidence. The collective bargaining agreements were signed by Petrusch in the name of "B & L Trucking and Cartage" [RA 10, 14, 15, 19, 23]. There is no designation as a corporation in the name of the entity as required by New York Law [*see* N.Y. BUS. CORP. LAW §301(a)(1) (McKinney 1963)]. Moreover, Petrusch's own testimony established that the corporation was not formed until 1975 [RA31] while Petrusch's contractual relationship with the Union began in 1974 [RA34]. The alleged corporation and all of Petrusch's d/b/a's operated out of the same addresses [RA 35-36].

In support of its claim that it was a corporate entity that signed the contracts, Petrusch relies on a lawsuit commenced by the Funds in 1978, against "B & L Trucking & Carting Co., Inc." That claim is without merit. The claimed corporate entity is "W, B & L Trucking and Cartage" - and the Funds' suit against a "B & L Trucking and Carting" corporation only serves to show the confusion Petrusch engendered. In any event, the Union was not party to that suit and is a separate legal entity from the Funds. Hence, it cannot be bound three years later by an alleged error in pleading made by the Funds.

bargaining agreements, Petrusch is required, among other things, to make fringe benefit payments to the New York State Teamsters Conference Pension and Retirement Fund and the New York Teamsters Council Welfare Trust Fund.3/

In July 1981, the Union informed Petrusch by mailgram that he was obligated to comply with the provisions of the collective bargaining agreements. In addition, the Union advised that, despite numerous notices, Petrusch had failed to make required fringe benefit contributions. The mailgram further stated that the Union would take action, including picketing, if all delinquent monies owed were not received within one week [A-16]. In short, the Union placed Petrusch on notice that it was going to exercise its legal right to publicize the labor dispute.

Petrusch refused to fulfill its contractual obligations and, therefore, in late July, 1981, the Union commenced picketing.4/

3/ Each of the agreements [stipulations] (RA 10, 14, 19, 23) provide that they "shall continue in full force and effect for the same term as the labor agreement and will continue in force and effect for the life of all future agreements replacing the present Labor Agreement . . . ."

The National Master Freight Agreement, to which Petrusch agreed to be bound in the signed "Letter of Intent" (RA15), provides:

> Article 39
>
> *Duration.* Section 1.
>
> This Agreement shall be in full force and effect from July 1, 1973, to and including March 31, 1976, and shall continue from year to year thereafter unless written notice of desire to cancel or terminate the Agreement is served by either party upon the other at least sixty (60) days prior to date of expiration.

This agreement has never been terminated and remains in effect. Thus, contrary to Petrusch's assertions, the Union does represent Petrusch's employees. The New York State Teamsters Local Cartage Supplement Agreement, an appendix incorporated by the National Master Freight Agreement, expressly governs employees employed as truck drivers and warehousemen (Article 40). Since the contracts remain in effect, the Union enjoys an irrebutable presumption of majority status as collective bargaining representative of Petrusch's employees. *See Confectionery Drivers* v. *NLRB*, 312 F.2d 108, 112 (2d Cir. 1963).

4/ On or about August 21, 1981, Petrusch filed an unfair labor practice charge concerning the picketing with the National Labor Relations Board ["NLRB"] on behalf of B & L Distribution Center, alleging a violation of Section 8(b)(4), the secondary boycott provision, of the Labor-Management Relations Act. After a determination by the Board's Regional Office that this charge lacked merit, Petrusch withdrew the charge.

Thus, contrary to the allegations in the application for certiorari, the Union's picketing is not merely an effort to collect a pre-petition debt. Rather, the picketing resulted from Petrusch's continuing violation of its express contractual obligations to, *inter alia,* make fringe benefit payments in accordance with collective bargaining agreements with the Union.[5/]

The Order of the Bankruptcy Court

On August 27, 1981, the United States Bankruptcy Court for the Northern District of New York issued, *ex parte,* an order to show cause, returnable September 1, 1981, together with a temporary restraining order. The order provided for service by mail and enjoined the Union from, *inter alia,* "picket ing against the debtor [Petrusch]." The Union immediately objected to the order by affidavit and memorandum of law and requested, pursuant to Norris-LaGuardia, that the motion for preliminary injunction be denied and the restraining order vacated.

On September 1, 1981, argument was presented before the Bankruptcy Court concerning Petrusch's motion for a preliminary injunction. After denying the Union's request that the temporary restraining order be dissolved, the Bankruptcy Court continued the restraining order and adjourned the matter to September 8, 1981.

Further argument was presented on September 8, 1981 and a hearing conducted limited to the questions of the operating structure of Petrusch's business and whether continued picketing would prevent successful completion of Petrusch's Chapter XIII reorganization plan [RA29]. Despite Norris-LaGuardia's broad anti-injunction provisions, the Bankruptcy Court issued a preliminary injunction against picketing based on its finding that the picketing was interfering with Petrusch's ability to fulfil the Chapter XIII plan [A-21].

5/ The District Court and Court of Appeals specifically found that a labor dispute existed between Petrusch and the Union under Section 13(c) of the Norris-LaGuardia Act, 29 U.S.C. §113(c), as the result of Petrusch's continuing failure to pay fringe benefit contributions, as required by the collective bargaining agreements; *see* A-4, A-28 to 29.

The Decision of the District Court

The Union appealed the Bankruptcy Court's order to the District Court for the Northern District of New York, and sought a stay of the preliminary injunction pending appeal. Chief Judge Howard G. Munson subsequently issued an order to show cause why a stay pending appeal should not be granted. Additional memoranda of law were submitted by the Union and Petrusch, and extensive argument respecting the motion for a stay was presented before District Court Judge Neal P. McCurn on September 29, 1981.

On October 6, 1981, Judge McCurn issued his memorandum-decision and order, staying the Bankruptcy Court's injunction pending appeal. He held that the Bankruptcy Court was without jurisdiction under the Norris-LaGuardia Act to enjoin the Union's picketing in its labor dispute with Petrusch.

One day later, at the request of Petrusch, Chief Judge Munson issued an *ex parte* stay of that order, pending application to the Court of Appeals for the Second Circuit. The Union's attorneys immediately requested an opportunity to be heard. Thereafter, on October 9, 1981, over the Union's objections, Judge Munson ordered that the stay of Judge McCurn's order be continued until October 21, 1981 to allow petitioner to apply to the Court of Appeals for an additional stay of Judge McCurn's order pending appeal.

The Decision of the Court of Appeals

Petrusch subsequently brought a motion in the Court of Appeals for stay of Judge McCurn's order. By order dated October 20, 1981, the Court of Appeals continued the stay pending appeal, and expedited the appeal. Oral argument was presented to the Court of Appeals on November 13, 1981 and, on December 15, 1981, the Court of Appeals affirmed the memorandum-decision and order of the District Court, staying the injunction. The Court of Appeals held that, pursuant

to the Norris-LaGuardia Act, the Bankruptcy Court was without jurisdiction to enjoin picketing by the Union in its labor dispute with Petrusch.[6/]

On January 4, 1982, some three weeks after the entry of judgment, Petrusch moved the Court of Appeals to stay issuance of the mandate and, thereby, to continue the restraint against the Union's lawful picketing. The Court of Appeals, on January 27, 1982, denied the petition for stay and the mandate issued on that date. Thus, after being enjoined for more than five months, the Union was allowed to resume picketing in early February, 1982.

On March 15, 1982, Petrusch applied for a writ of certiorari for this Court's review of the Court of Appeals decision. In conjunction with the petition, Petrusch made separate applications to Justices Marshall and Rehnquist for an injunction against the Union's picketing pending this Court's consideration of the matter. Those applications were denied.

REASONS FOR DENYING THE APPLICATION FOR WRIT OF CERTIORARI

Congress enacted the Norris-LaGuardia Act a half century ago with the broadly declared purpose of "taking the federal courts out of the labor injunction business."[7/] This Court, recognizing the history and background that led Congress to take this view, has consistently refused to give Norris-LaGuardia narrow interpretations that would have restored many labor dispute controversies to the courts.[8/] In explaining the

---

6/ The original appeal of the Bankruptcy Court's order is presently pending before the District Court. Both the District Court and Court of Appeals based their decisions, staying the Bankruptcy Court's order, exclusively on Norris-LaGuardia's withdrawal of federal jurisdiction to issue injunctions. Consequently, the lower courts did not address the Union's contentions that the Bankruptcy Court's injunction was procedurally defective and that determination of the legality of the Union's picketing is preempted to the National Labor Relations Board.

7/ *See, Marine Cooks & Stewards* v. *Panama S.S. Co.*, 362 U.S. 365, 369 (1960).

8/ *See, e.g. United States* v. *Hutcheson*, 312 U.S. 219 (1941); *Milk Wagon Drivers' Union* v. *Lake Valley Farm Products, Inc.*, 311 U.S. 91 (1941); *New Negro Alliance* v. *Sanitary Grocery Co.*, 303 U.S. 552 (1938).

necessity for giving the Act a broad construction, the Court in *Railroad Telegraphers* v. *Chicago & North Western Ry.*[9/] stated that:

> The hearings and committee reports reveal that Congress attempted to write its bill in unmistakable language because it believed previous measures looking toward the same policy against nonjudicial intervention in labor disputes had been given unduly limited constructions by the courts.[10/]

During the four decades preceding the instant case, the courts of appeals for three circuits specifically considered the applicability of Norris-LaGuardia's anti-injunction provisions to bankruptcy proceedings.[11/] In each instance, the court found that Norris-LaGuardia deprived the bankruptcy court of jurisdiction to enjoin picketing in a labor dispute. Thus, the Court of Appeals decision herein that the Bankruptcy Court was without jurisdiction to enjoin the Union's picketing in its labor dispute with Petrusch does not present a novel or controversial question of law. Rather, the decision below gives effect to the clear Congressional purpose in enacting Norris-LaGuardia and fully accords with established decisional law.

As the Court of Appeals observed [A-5], Petrusch's assertion that Congress, in passing the Bankruptcy Reform Act of 1978, intended to supercede the Norris-LaGuardia Act, *sub silentio*, is beyond belief. If Congress had intended to remove Norris-LaGuardia's injunction prohibitions from bankruptcy proceedings, it would have so stated. Neither the language nor the legislative history of the Bankruptcy Code evinces such intent.

It is, therefore, not necessary for this Court "to determine the appropriate interplay" between Norris-LaGuardia and the

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9/ 362 U.S. 330 (1960).

10/ *Id.* at 336.

11/ *Teamsters Local 807* v. *Bohack*, 541 F.2d 312 (2d Cir. 1976), *cert. denied*, 439 U.S. 825 (1978); *In Re Third Avenue Transit Corp.*, 192 F.2d 971 (2d Cir. 1951); *International Brotherhood of Teamsters* v. *Quick Charge, Inc.*, 168 F.2d 513 (10th Cir. 1948); *Anderson* v. *Bigelow*, 130 F.2d 460 (9th Cir.), *cert. denied*, 317 U.S. 690 (1942).

Bankruptcy Code. In the absence of clear and specific direction to the contrary, Norris-LaGuardia's Congressionally mandated prohibition against the issuance of injunctions in labor disputes prevails.

POINT I

THE COURTS BELOW CORRECTLY DETERMINED THAT THE NORRIS-LAGUARDIA ACT DEPRIVED THE BANKRUPTCY COURT OF JURISDICTION TO RESTRAIN THE UNION'S PICKETING OF PETRUSCH.

A. The Anti-Injunction Provisions of the Norris-LaGuardia Act Are Clearly Applicable to Bankruptcy Proceedings.

The Norris-LaGuardia Act provides that no court of the United States shall have jurisdiction to issue an injunction to restrain picketing in any case involving or growing out of any labor dispute. The Act specifically identifies certain acts which cannot be enjoined or subjected to "any restraining order or temporary or permanent injunction."[12/] Among those protected acts are publicizing the existence of a labor dispute by, *inter alia*, speaking or picketing.[13/] The Act also provides that a union and its members may not be restrained from peacefully assembling to act or to organize in promotion of their interest in a labor dispute. Thus, Section 104 of Norris-LaGuardia provides, in pertinent part, that:

> *No court* of the United States *shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person* or persons participating or interested in such dispute (as these terms are herein defined) *from* doing, whether singly or in concert, any of the following acts:
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> . . .
>
> (e) *Giving publicity* to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, *patrolling*, or by any other method not involving fraud or violence;

12/ 29 U.S.C. §104.

13/ 29 U.S.C. §104(e).

(f) *Assembling peaceably* to act or to organize to act in promotion of their interests in a labor dispute.[14/]

The protective coverage of the Norris-LaGuardia Act is broad and, as the title indicates, it deals with the power of the courts; it does not deal with the rights of parties.[15/] As stated by Justice Frankfurter in *United States* v. *United Mine Workers:*[16/]

> Congress was concerned with the withdrawal of power from the federal courts to issue injunctions in a defined class of cases. Nothing in the Act remotely hints that the withdrawal of this power turns on the character of the parties. . . . The limitation on the jurisdiction of the court depends entirely on the subject matter of the controversy.[17/]

Thus, that the employer in a labor dispute is undergoing reorganization pursuant to the Bankruptcy Code is irrelevant to Norris-LaGuardia's coverage. Indeed, Norris-LaGuardia was enacted, in large part, in response to federal court injunctions in receivership proceedings. As noted by Justice Frankfurter in *United Mine Workers:*

> [N]o one aware of the background of mischief which the Act was intended to remedy could find an intention in Congress to allow injunctions in labor disputes involving plants in receivership. . . . No series of cases contributed more to the feeling that the federal courts abused their equity jurisdiction than those involving employees of railroads in equity receivership.[18/]

14/ 29 U.S.C. §104 [emphasis supplied].

15/ The Norris-LaGuardia Act in its title declared it was:

> An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity and for other purposes.

It is settled law that an Act's title may be considered in ascertaining Congressional intent. *Church of the Holy Trinity* v. *United States*, 143 U.S. 457 (1892).

16/ 330 U.S. 258 (1947).

17/ *Id.* at 313 (Frankfurter, J., concurring). In *United Mine Workers*, this Court held that Norris-LaGuardia did not apply to the United States as an employer. But both the majority and the special concurring opinions by Justice Frankfurter, and by Justices Black and Douglas make clear that the Government as an employer is the only one exempted from Norris-LaGuardia's provisions.

18/ *Id.* at 320 n.6. *See*, Nelles, *A Strike and Its Legal Consequences - An Examination of the Receivership Precedent for the Labor Injunction*, 40 Yale L.J. 507 (1931).

Clearly, therefore, any contention that Norris-LaGuardia is not applicable to bankruptcy proceedings is directly contrary to the specific purpose for which the statute was enacted.[19/]

19/ In this regard, Petrusch's argument that Norris-LaGuardia does not apply to the Bankruptcy Court because it is not an Article III court is incorrect. Section 113(d) of the Act defines "court of the United States" as follows:

> The term "court of the United States" means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia.

The Bankruptcy Court clearly falls within this definition. Moreover, the Bankruptcy Court is an adjunct of the United States District Courts and, pursuant to 28 U.S.C. §1471, all bankruptcy jurisdiction is vested in the first instance in the District Courts. Thus, the Bankruptcy Court may exercise only that jurisdiction initially vested in the District Court -- an Article III court clearly covered by Norris-LaGuardia.

This Court has repeatedly recognized that Congress intended Norris-LaGuardia to reach all federal courts sitting in equity. *Marine Cooks* v. *Panama S.S. Co.*, 362 U.S. 365, 369 (1960); *Railroad Telegraphers* v. *Chicago North Western Ry.*, 362 U.S. 330, 335-36 (1960); *Rail road Trainmen* v. *Toledo, Peoria Western Railroad*, 321 U.S. 50, 58 (1944); *United States* v. *Hutcheson*, 312 U.S. 219, 231 (1941); *United Milk Wagon Drivers' Union* v. *Lake Valley Farm Products, Inc.*, 311 U.S. 91, 101 (1940).

In giving effect to the intent of Congress, Norris-LaGuardia has specifically been found applicable to "legislative courts". *Alesna* v. *Rice*, 69 F.Supp. 897 (D. Hawaii 1947), *inj. dissolved* 74 F. Supp. 865 (D. Hawaii 1948), *aff'd* 172 F.2d 176 (9th Cir.), *cert. denied*, 338 U.S. 814 (1949); *Washington Post Co.* v. *Local 6*, 92 LRRM 2961 (D.C. Superior Ct. 1976). In holding Norris-LaGuardia applicable to the U.S. District Court for the territory of Hawaii, the court in *Alesna* v. *Rice* stated that:

> [T]he thing of importance to note was that Congress was dealing with equity power possessed by any Federal Court. This Court, although legislative, not only comes within the terms of 29 U.S.C. §113(d), but additionally is within the target area reached by Congress through the Norris-LaGuardia Act, for it has equity powers identical to those held by Constitutional Federal Courts. To arrive at any other conclusion than that the Act applies directly and squarely to this Court would not only be to construe the Act in a "spirit of mutilating narrowness" [see *United States* v. *Hutcheson*, 312 U.S. 219 (1941)] while fully aware of what Congress was "driving at", but would further bring about the absurd result that this legislative U.S. District Court has more power today than a Constitutional U.S. District Court.

69 F.Supp. at 902.

The question of Norris-LaGuardia's prohibition of injunctions in bankruptcy proceedings was first squarely addressed by the court in *Anderson* v. *Bigelow*.[20] In holding Norris-LaGuardia applicable to an employer in receivership, the Court of Appeals for the Ninth Circuit said that:

> [I]t has been suggested elsewhere that employers can escape the provisions against peaceful striking or picketing if their enterprises can be brought within a federal receivership. We can find no case supporting such an interpretation of the Norris-LaGuardia Act. It prohibits injunctions "in *any* case involving or growing out of *any* labor dispute." . . . There is no exception of "any case" or "any labor dispute" in receivership proceedings.[21]

The *Anderson* court found no policy reasons for exempting bankruptcy proceedings from the purview of Norris-LaGuardia. In rejecting the contention that employers in bankruptcy should receive special treatment, the court observed that:

> Apart from the clear provisions of the Norris-LaGuardia Act, we see no reason why Congress should deprive the federal courts of the right of enjoining striking and picketing in industrial disputes, where the enterprise is brought before the court for its general equity protection and should allow the injunction where the enterprise already has been brought there for equitable relief with regard to the company's creditors. In the latter case it is nonetheless an industrial dispute. The receiver's truckmen are engaged in an interstate industry and the community as a whole is as much benefitted by the freedom of labor to organize effectively for better wages or elimination of grievances in dealing with an employer receiver as any other employer. [citing *United States* v. *Hutcheson*, 312 U.S. 219, 235 (1941)].
>
> True, a strike may stop the running of the trucks, but this is no more an inconvenience to the public with the trucking in receivership than in private operation.[22]

Similarly, in *International Teamsters* v. *Quick Charge, Inc.*,[23] the Court of Appeals for the Tenth Circuit held that Norris-LaGuardia precluded injunctive relief in a receivership arising

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20/ 130 F.2d 460 (9th Cir.), *cert. denied*, 317 U.S. 690 (1942).

21/ *Id.* at 462.

22/ *Id.* at 463.

23/ 168 F.2d 513 (10th Cir. 1948).

under the Chandler Act. In that case, the district court had issued an injunction on the premise that the Chandler Act of 1938, which amended the Bankruptcy Act, must prevail in any conflict with Norris-LaGuardia, since the Chandler Act was later legislation and contained labor provisions. In reversing and holding that the reorganization court was without jurisdiction under Norris-LaGuardia, the court of appeals stated that:

> There is nothing in the Norris-LaGuardia Act which exempts equity receiverships of any kind from its provisions. It prohibits injunctions in *any case* involving or growing out of *any* labor dispute.[24/]

Subsequently, in *Third Ave. Transit Corp.*,[25/] the Court of Appeals for the Second Circuit expressly held that Norris-LaGuardia applied to proceedings in bankruptcy and, consequently, that the reorganization court was without jurisdiction to enjoin a union's strike. In vacating the reorganization court's injunction, the Second Circuit held that:

> The court below . . . had no jurisdiction to issue the ex parte injunction and the denial to vacate it was error unless the pending reorganization proceedings by these debtors under Chapter X of the Bankruptcy Act makes the Norris-LaGuardia Act inapplicable to that court. Both the language and the purposes of that statute, see concurring opinion of Mr. Justice Frankfurter in United States v. United Mineworkers of America, 330 U.S. 313-14, and footnote 6, page 320, forbids such a conclusion. *The well established power of the reorganization court to issue orders necessary to conserve the property in its custody must be exercised within the scope of a jurisdiction which is limited by the broad and explicit language of the Norris-LaGuardia Act.*
>
> . . . .
>
> As the reorganization court, like other courts of the United States within the definition of 29 U.S.C.A. Section 113(d), was without jurisdiction to issue this injunction, the denial of the motion to vacate was erroneous.[26/]

24/ *Id.* at 516.

25/ 192 F.2d 971 (2d Cir. 1951).

26/ *Id.* at 973 [emphasis supplied].

In *Teamsters Local 807* v. *Bohack*,[27/] the Second Circuit reaffirmed its position that the Norris-LaGuardia Act prohibited enjoining a labor union's picketing against a debtor in bankruptcy. In *Bohack*, the debtor corporation filed a petition under Chapter XI of the Bankruptcy Act and was thereafter allowed to operate its business as a "debtor-in-possession." Bohack subsequently began laying off its employees and subcontracting bargaining unit work to another company. When Bohack refused to accede to the union's demands that it cease such subcontracting, the union struck and began picketing. The bankruptcy court issued a restraining order and, thereafter, a preliminary injunction, enjoining picketing or strikes against Bohack.

On appeal, the district court held that the bankruptcy court was without jurisdiction to enjoin the picketing and, therefore, vacated the preliminary injunction. The district court, however, then issued a temporary restraining order, enjoining the union from striking or picketing against Bohack pending further proceedings before the bankruptcy court.

The court of appeals in *Bohack* rejected the district court's reliance on Section 301 of the Labor-Management Relations Act[28/] as a jurisdictional basis for the grant of injunctive relief. The court emphasized that an absolute precondition to the limited exception to Norris-LaGuardia recognized in *Boys Markets, Inc.* v. *Retail Clerks Union Local 770*[29/] was that the dispute be subject to a mandatory arbitration procedure. Since *Bohack* had neither been ordered to arbitrate nor agreed to submit the dispute to arbitration, the Second Circuit held that Norris-LaGuardia prohibited the issuance of an injunction.[30/]

27/ 541 F.2d 312 (2d Cir. 1976), *cert. denied*, 439 U.S. 825.

28/ 29 U.S.C. §141 et seq.

29/ 398 U.S. 235 (1970).

30/ The Supreme Court in *Boys Markets* emphasized:

> *Our holding in the present case is a narrow one. We do not undermine the vitality of the Norris-LaGuardia Act.* We deal only with the situation in which a collective bargaining agreement contains a mandatory grievance adjustment or arbitration procedure.

398 U.S. at 253-54 [emphasis supplied].

In the instant case, it is clear that the *Boys Markets* exception to Norris-LaGuardia is not applicable. The agreements between the Union and Petrusch expressly provide that where the employer is delinquent in fringe benefit payments, the Union shall not be bound by any arbitration or no strike clause contained in the agreements.[31/] Since the picketing in the instant case involved a labor dispute that the Union was not bound to arbitrate, *Boys Markets* was not applicable.[32/]

Finally, Petrusch argues, and the Bankruptcy Court held, that issuance of an injunction was proper because the picketing by the Union was jeopardizing Petrusch's ability to operate under his Chapter XIII plan. That same argument, however, was rejected by the Second Circuit in *Bohack*. The court of appeals reasoned that Bohack's claim that the picketing would put it out of business did not constitute a basis for ignoring or disregarding the clear language in the Norris-LaGuardia Act.[33/]

31/ Paragraph 2 of the Stipulations provide, in part, that:

> In the event the Union suspends the operations of a defaulting Employer, the Union shall not be bound by any arbitration or no strike clause in this Agreement.

RA7, 11, 16, 20.

32/ See *Buffalo Forge Co.* v. *Steelworkers*, 406 U.S. 397, 406-07 (1976), quoting from the dissent in *Sinclair Refining Co.* v. *Atkinson*, 370 U.S. 195, 228 (1962): "When a strike is sought to be enjoined because it is over a grievance which both parties are contractually bound to arbitrate, the District Court may issue no injunctive order until it first holds that the contract does have that effect . . . ." No such contention has been made by Petrusch in the instant case, and there was no such holding by the Bankruptcy Court.

33/ In rejecting Bohack's arguments of financial hardship as the basis for injunctive relief, the Second Circuit explained that:

> The argument is made that to allow pickering in the case of this financially troubled debtor is to put it out of business. That is, unfortunately, sometimes the sad outcome when a union and an employer cannot come to terms. But *the policy of our labor laws is simply to provide rules for the handling of labor disputes, not to prohibit the use of economic power in the resolution of such disputes. By filing under Chapter XI an employer does not become clothed in immunity from union action.*
>
> As we recognized in *Shopmen's Local Union No. 455* v. *Kevin Steel Products, Inc.*, 519 F.2d 698 (2d Cir.), *cert. denied*, 423 U.S. 1017 (1975), the debtor in a bankruptcy proceeding

B. The Bankruptcy Reform Act of 1978 Did Not Supercede the Norris-LaGuardia Prohibition Upon Issuance of Injunctions.

Petrusch contends that the Bankruptcy Reform Act 1978, and particularly the automatic stay provisions of Section 362 of that Act,[34/] constitutes a grant of authority to issue an injunction against picketing in a labor dispute, notwithstanding the prohibition contained in the Norris-LaGuardia Act. That contention is without support.

It is clear that Congress was fully aware of the Second Circuit's decision in *Bohack* when it enacted the Bankruptcy Code.[35/] Notwithstanding that familiarity, there is no indication in the legislative history that Congress intended to supercede Norris-LaGuardia, overrule *Bohack*, and allow for an injunction against picketing in a labor dispute.[36/]

33/ - continued -

> has other means for release from unlivable conditions in a collective bargaining agreement by petitioning for permission to reject the contract. *But the power to permit rejection of the agreement in particular circumstances does not confer an antecedent jurisdiction on the court to enjoin picketing in spite of the Norris-LaGuardia Act.*

541 F.2d at 318. [emphasis supplied].

34/ 11 U.S.C. §362.

35/ House Rep. 95-595, reprinted at App. 2 COLLIER ON BANKRUPTCY, p. 10 n. 40 (15th ed. 1980) [hereinafter COLLIER].

36/ Where Congress intended to overrule decisional law established order the previous Bankruptcy Act, it specifically so provided. *See* Congressional Debates — House and Senate, reprinted in App. 3 COLLIER ON BANKRUPTCY at IX-102, IX-109, X-26 (15th ed. 1980). The legislative history indicates that the automatic stay provisions are essentially a change in procedure as opposed to substance. House Report No. 95-595 states:

> Because the stay is essentially an injunction, the three stages of the stay may be analogized to the three stages of an injunction. The filing of the petition which gives rise to the automatic stay is similar to a temporary restraining order. The preliminary hearing is similar to the hearing on a preliminary injunction, and the final hearing and order is similar to a permanent injunction. The main difference lies in which party must bring the issue before the Court. . . . The difference does not, however, shift the burden of proof. Subsection (g) leaves that burden on the party opposing relief from the stay (that is, on the party seeking continuance of the injunction) on the issue of adequate protection.

Legislative history regarding Section 362 indicates that the stay was intended to apply to telephone harassment of debtors by bill collectors. House Report No. 95-595 discussed the automatic stay provision of Section 362(a)(6) in these terms:

> Paragraph (6) prevents creditors from attempting in any way to collect a pre-petition debt. Creditors in consumer cases occasionally telephone debtors to encourage repayment in spite of bankruptcy. Inexperienced, freightened, or ill counseled debtors may succumb to suggestions to repay notwithstanding their bankruptcy. This provision prevents evasion of the purpose of the bankruptcy laws by sophisticated creditors.[37/]

Certainly Congress did not intend to overrule Norris-LaGuardia with a Bankruptcy Code provision aimed at telephone harassment of debtors by creditors. The rights established by Norris-LaGuardia are central to the rights of labor. Picketing involves the right to publicize the existence of a dispute - a right protected by Norris-LaGuardia[38/] and long recognized in the decisional law. Picketing is not unlawful merely because it is effective,[39/] and the right to picket goes hand-in-hand with the right to strike.[40/] This Court has stated that unless picketing is condemned by the Labor-Management Relations Act, "the public interest is served by freedom of labor to use the weapon of picketing."[41/] "[E]conomic weakness of the affected party" cannot justify a limitation of picketing,

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36/ - continued -

House Report 95-595, COLLIER at p. 344. Commentary on the Bankruptcy Code indicates that the automatic stay provision was intended "as a necessary incident to efficient administration of a bankruptcy case but one which has utility of limited duration only." 1 Collier Bankruptcy Manual pp. 363-67.

37/ House Rep. 95-595, COLLIER at 342.

38/ 29 U.S.C. §104(e). As set forth at n. 5, *supra*, p. 4, Petrusch continues to ignore his contractual obligation to make fringe benefit contributions.

39/ *See generally, Local 761, IUE (General Electric* v. *NLRB*, 366 U.S. 667 (1961).

40/ *Steelworkers (Carrier Corp.)* v. *NLRB*, 376 U.S. 492, 499 (1964).

41/ *Garner* v. *Teamsters Union*, 346 U.S. 484, 500 (1953).

since "use of economic pressure . . . is not a grudging exception under the [federal] Act; it is part and parcel of the process of collective bargaining."[42/]

Absent express Congressional intent that the automatic stay of the Bankruptcy Code was to overrule Norris-LaGuardia, that result may not be obtained in the name of "accomodation." Norris-LaGuardia does not admit of accomodation to non-labor statutes. Thus, even if the Union's actions technically violated the automatic stay language, that would not render Norris-LaGuardia's anti-injunction provisions inapplicable. This Court has repeatedly held that demonstration that a union's actions may be unlawful under non-labor legislation does not affect Norris-LaGuardia's withdrawal of jurisdiction from the federal courts.[43/]

In attempting to support its assertion that Norris-LaGuardia is not applicable, however, Petrusch argues that the automatic stay provision in the Bankruptcy Code is self-enforcing and, therefore, that the Bankruptcy Court did not really issue an injunction against picketing but merely declared the applicability of Section 362 to the Union's actions. Petrusch thus attempts to distinguish *Third Ave. Transit Corp.* and *Bohack* as cases delaing with direct judicial injunctions as opposed to mere declarations of applicability of a statutory stay. That semantic argument, however, ignores facts in the record as well as the express language of Section 362.

The Bankruptcy Court in the instant case made no specific finding that the automatic stay applied to the Union's picketing and did not even attempt to distinguish *Third Ave. Transit Corp.* or *Bohack* on that ground. Rather, based on its finding that the picketing was interfering with Petrusch's ability to

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42/ *Machinists Lodge 76* v. *Wisconsin Employment Relations Commission*, 427 U.S. 132, 149 (1976).

43/ *Railroad Telegraphers* v. *Chicago & North Western Ry.*, 362 U.S., 330, 339 (1960); *Brotherhood of Railroad Trainmen* v. *Chicago River & I.R. Co.*, 353 U.S. 30 (1957); *Milk Wagon Drivers' Union* v. *Lake Valley Farm Products, Inc.*, 311 U.S. 91, 103 (1940).

fulfill the Chapter XIII plan, the Bankruptcy Court predicated the injunction against picketing on its inherent authority to preserve the debtor's estate [RA27]. Thus, the Bankruptcy Court issued the injunction on precisely the same basis the Second Circuit found to be impermissible in *Third Ave. Transit Corp.* and *Bohack.*[44/]

Furthermore, that a direct judicial injunction was issued herein is clearly established by the Bankruptcy Court's order that specifically enjoined "picketing the debtor's business or against the debtor's interest . . . *until further order of this court.*" [A-20].

Moreover, the bankruptcy court's authority with respect to Section 362 is not limited to mere declarations of applicability. Pursuant to Section 362(d), the bankruptcy court's control over the stay is virtually complete. The court possesses the power to terminate, annul, modify, condition, or extend the stay.[45/] Thus, for enforcement of the stay as well as relief therefrom, a party must look to the power of the court. As discussed previously, the "automatic" stay is merely a procedural device that contemplates and requires judicial action for

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44/ Despite the Second Circuit's clear admonition in *Bohack* that a bankruptcy court's power to reject a collective bargaining agreement in particular circumstances does not confer jurisdiction to enjoin picketing in spite of Norris-LaGuardia, the legal authority relied upon for issuance of the injunction herein by the Bankruptcy Court was a case dealing solely with the rejection of a collective bargaining agreement. The Bankruptcy Judge relied upon *Joint Executive Board* v. *Hotel Circle*, 613 F.2d 210 (9th Cir. 1980), as allowing his grant of injunctive relief (RA 26-28). That case, however, held only that the Bankruptcy Act's provision permitting the rejection of executory contracts of the debtor applied to collective bargaining agreements. Accordingly, that court held that a collective bargaining agreement found to be onerous and burdensome could be rejected. The *Hotel Circle* court relied upon the Second Circuit's decision in *Shopmen's Local 455* v. *Kevin Steel Products, Inc.*, 519 F.2d 698 (2d Cir. 1975), a case decided a year before *Bohack*. *Hotel Circle* did not deal with the issue of injunctive relief and provides no basis whatsoever for the Bankruptcy Court's issuance of an injunction. Accordingly, the Bankruptcy Court's reliance on that case was clearly erroneous.

45/ *See* 11 U.S.C. §362(e), (f) and (g).

continuation. Additionally, practice under Section 362 conforms with that of Rule 65 of the Federal Rules of Civil Procedure; that is — the party seeking injunctive relief must demonstrate to the court that he is entitled to it.[46/]

POINT II

THE ISSUANCE OF THE INJUNCTION HEREIN WAS OTHERWISE IMPROPER.

A. Petrusch Did Not Satisfy the Burden of Proof Necessary for Obtaining Injunctive Relief.

As discussed above, pursuant to the Norris-LaGuardia Act, the Bankruptcy Court was without jurisdiction to enjoin picketing in the instant case. In addition, however, the Bankruptcy Court's issuance of an injunction was improper because Petrusch has failed to satisfy the necessary burden of proof to sustain injunctive relief. The injunction, therefore, was improper.

Pursuant to the express language of the Bankruptcy Act, the party seeking a continuation of an automatic stay has the burden of proof.[47/] The automatic stay provision in the Bankruptcy Act, Section 362, states:

> In any hearing under subsection (d) or (3) of this section concerning relief from the stay of any act under subsection (a) of this section —
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> (1) the party requesting such relief has the burden of proof on the debtor's equity in property; and
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> (2) *the party opposing such relief has the burden of proof on all other issues.*[48/]

By placing the burden of proof on the party seeking continuation of the stay, the Bankruptcy Act of 1978 differs from some of the case law developed under the prior Act.[49/] In this important respect, the automatic stay provision in the Bankruptcy Act conforms with Rule 65 of the Federal Rules

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46/ See pp. 20-21, *infra*.

47/ 11 U.S.C. §362(g).

48/ 11 U.S.C. §362(g)(2) [emphasis supplied].

49/ 1 COLLIER BANKRUPTCY MANUAL ¶362.06 [4] (3d ed. 1981).

of Civil Procedure. In analyzing the Bankruptcy Act's automatic stay provision, one commentator has noted that:

> The burden regarding relief from the section 362(a) stay differs from some of the law which developed under the Bankruptcy Act, whereby the party seeking relief had the burden of showing that he was entitled thereto. Instead, it was intended that *practice under section 362 would conform to that under Federal Rule of Civil Procedure 65, where the party seeking an injunction has the burden of proving that he is entitled to it.* Thus, section 362(g) follows the Federal Rules of Civil Procedure to establish the desired standard regarding burden of proof on the question of the propriety of relief from the stay.50/

A party seeking injunctive relief pursuant to Rule 65 of the Federal Rules of Civil Procedure must establish that he has a probability of success on the merits of the underlying dispute; that irreparable injury will result if injunctive relief is not granted; that the party sought to be enjoined will not be injured by the injunctive relief; and that the balance of hardship favors the granting of injunctive relief.51/

While Petrusch sought continuation of the stay, he failed to submit the requisite evidence establishing entitlement to injunctive relief. Petrusch failed to submit evidence establishing any likelihood of success on the merits, that the issuance of injunctive relief would not injure the Union or that, on balance, the hardship tips in favor of issuance of injunctive relief. Indeed, the only criteria for which Petrusch has submitted any evidence whatsoever involved the injury which he would purportedly suffer if injunctive relief was not granted.

Moreover, this evidence, admitted over objection, consisted solely of hearsay testimony. When the Union requested that the Bankruptcy Court require Petrusch to meet its burden by producing the documents and records that would constitute the best evidence of the matters being testified to by Petrusch, the court refused to do so and admonished the Union that the hearing could be adjourned and a trial held two months later [RA32-33]. Aside from hearsay testimony, the record shows

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50/ *Id.* [emphasis supplied]. *See* 124 CONG. REC. H11,093 (daily ed. Sept. 28, 1978); S17,409 (daily ed. Oct. 6, 1978).

51/ *See Unicon Management Corp.* v. *Koppers*, 366 F.2d 199 (2d Cir. 1966).

that Petrusch was merely inconvenienced by the picketing [RA33-34]. Nevertheless, the Bankruptcy Court had made up its mind on the question of irreparable injury before taking any testimony[RA28].

Petrusch did not satisfy his burden of proof for the issuance of injunctive relief, and for that reason alone the injunction was improper.

B. This Matter is Within The Sole and Exclusive Jurisdiction of the National Labor Relations Board and, Consequently, the Bankruptcy Court Lacked Jurisdiction over the Subject Matter.

The Bankruptcy Court granted Petrusch's request for an order enjoining the Union from picketing in support of a labor dispute. Since the picketing was arguably protected or prohibited by the Labor-Management Relations Act,[52/] it was preempted to the National Labor Relations Board. Accordingly, the Bankruptcy Court lacked jurisdiction over the subject matter and was without authority to grant injunctive relief.

In *SanDiego Building Trades Council* v. *Garmon*,[53/] this Court held that the NLRB has sole and exclusive jurisdiction over matters that are arguably protected or prohibited by Sections 7 and 8 of the Labor-Management Relations Act ["LMRA"].[54/] The Court in *Garmon* reasoned that it would frustrate the national labor policy to permit adjudicative bodies other than the NLRB to decide matters which are arguably subject to the LMRA.

52/ 29 U.S.C. §141 *et seq.*

53/ 359 U.S. 236 (1959).

54/ 29 U.S.C. §§157, 158. Section 7 of the LMRA provides that all employees shall have the right to form, join or assist in the formation of a labor union, to bargain collectively and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection. Section 8 of the LMRA provides that certain activities by employers and unions constitute unfair labor practices. Pursuant to Section 10 of the LMRA, 29 U.S.C. §160, the NLRB has sole and exclusive authority to administer the LMRA, including the adjudication of unfair labor practices. Section 10 further provides the NLRB with exclusive authority to petition the United States District Court for appropriate injunctive relief pending final Board adjudication, where the Board has reasonable cause to believe a violation of Section 8(b)(4) has occurred. 29 U.S.C. §160(l).

Also, the Court in *Garmon* expressly held that the grant of sole and exclusive jurisdiction to the NLRB included determining whether the challenged action is, in fact, governed by the LMRA. Since only the NLRB has jurisdiction to decide whether a specific act is governed by the LMRA, once it is determined that the activity is *arguably* subject to the act, state and federal courts are deprived of jurisdiction.[55/]

Moreover, it is established law that injunctions against picketing activity that is arguably prohibited or protected by Sections 7 and 8 of the LMRA may issue only upon application by the NLRB. The federal courts are without jurisdiction to enjoin such activities at the instance of private parties, *i.e.*, employers or unions.[56/]

Furthermore, inasmuch as NLRB proceedings serve to enforce the Board's police and regulatory powers, they are expressly exempted from the automatic stay provisions in the Bankruptcy Code.[57/] Thus, in *NLRB* v. *Evans Plumbing Company*,[58/] the Fifth Circuit Court of Appeals held that the automatic stay provision in Section 362 of the Bankruptcy Act did not apply to proceedings before the NLRB. In reaching this conclusion, the court explained that:

> The crucial issue is whether the NLRB is a governmental unit and whether this action is one to enforce police or regulatory powers. It is clear that the NLRB is a governmental unit. This action was undertaken to enforce the federal law regulating the relationship

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55/ 359 U.S. at 244-45.

56/ *Local 438, Laborers* v. *Curry*, 371 U.S. 542 (1963); *Plumbers Union* v. *Door County*, 359 U.S. 354 (1959); *Sea-Land Service* v. *Longshoremen's Association*, 625 F.2d 38 (5th Cir. 1980). *See* note 54, *supra*.

57/ 11 U.S.C. §362(b)(4).

58/ 639 F.2d 291 (5th Cir. 1981).

between employer and employee. We can safely conclude therefore that this is an exercise of police or regulatory powers which places it within the §362(b) (4) exemption to the automatic stay.[59/]

In the instant case, the picketing by the Union is arguably protected or prohibited by Sections 7 and 8 of the LMRA and, therefore, is governed by the LMRA and not the Bankruptcy Act.[60/] Indeed, Petrusch has expressly acknowledged that the Union's picketing activity is governed by the LMRA. As discussed previously, Petrusch filed a charge [RA24] with the NLRB in August, 1981, alleging that the Union's picketing violated Section 8(b)(4) of the LMRA.[61/] And yet, although the NLRB found that no violation of the LMRA had occurred, that same picketing was enjoined by the Bankruptcy Court in the instant action.

59/ 639 F.2d at 293; *see also, In re Shippers Interstate Service, Inc.*, 618 F.2d 9 (7th Cir. 1980); *In re Bel Air Chateau Hospital, Inc.*, 611 F.2d 1248 (9th Cir. 1979); *In re Atlantic International Corp.*, ——F. Supp. ——, 101 LRRM 2128 (D. Md. 1979).

The court in *Bel Air Chateau Hospital* found that questions regarding successorship or transfer of business operations, a question raised by Petrusch in the instant case, were matters within the exclusive jurisdiction of the NLRB, not the Bankruptcy Court. The Ninth Circuit said:

> We think the [bankruptcy] court erred in issuing a stay solely on the basis of its determination that the Receiver was not an alter ego of the business's former operators. Whether a new employer is an "alter ego" or a "successor" to an earlier employer is a question of substantive federal labor law, the resolution of which is committed to the Board and the courts that review its determinations.

611 F.2d at 1251. *See Golden State Bottling Co.* v. *NLRB*, 414 U.S. 168 (1973); *Southport Petroleum Co.* v. *NLRB*, 315 U.S. 100 (1942).

60/ Section 8(b) of the LMRA contains multiple provisions governing picketing by labor unions. For instance, Section 8(b)(4) provides that it is an unfair labor practice for a union to engage in secondary activity, including picketing a neutral party as a means of applying pressure on an employer.

61/ As was noted *supra*, the charge filed by Petrusch was withdrawn by him after the NLRB determined that the charge lacked merit. The withdrawal of the charge, however, did not in any way confer jurisdiction upon the Bankruptcy Court. Since this action is preempted to the NLRB, the NLRB's determination that the Union's picketing was not violative of the LMRA constitutes a final determination binding on all parties and not reviewable by the courts. Accordingly, the Bankruptcy Court was without jurisdiction to enjoin the Union's picketing. *Meat Cutters* v. *Fairlawn Meats, Inc.*, 353 U.S. 948 (1957).

Since the legality of the Union's picketing is within the sole and exclusive jurisdiction of the NLRB, the Bankruptcy Court lacked jurisdiction over the subject matter. It was, therefore, without authority to enjoin the Union's picketing. Accordingly, the injunction was properly stayed by the courts below.

CONCLUSION

For all of the foregoing reasons and authorities, the court below correctly concluded that the Norris-LaGuardia Act deprived the Bankruptcy Court of jurisdiction to enjoin the Union's picketing in its labor dispute with Petrusch. The petition for writ of certiorari, therefore, should be denied.

Respectfully submitted,

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Appendix

STATUTORY PROVISIONS INVOLVED

1(a). Section 1 of the Norris-LaGuardia Act, 29 U.S.C. §101, provides that:

> No court of the United States, as defined in this chapter, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter.

1(b). Section 2 of the Norris-LaGuardia Act, 29 U.S.C. §102, provides that:

> In the interpretation of this chapter and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are defined and limited in this chapter, the public policy of the United States is declared as follows:
>
> Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraining, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of and limitations upon the jurisdiction and authority of the courts of the United States are enacted.

1(c). Section 4 of the Norris-LaGuardia Act, 29 U.S.C. §104, provides that:

> No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor

dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103 of this title;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title.

1(d). Section 7 of the Norris-LaGuardia Act, 29 U.S.C. §107, provides that:

No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as defined in this chapter, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect —

STATUTORY PROVISIONS INVOLVED

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to complainant's property will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon complaintant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complaintant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complaintant's property are unable or unwilling to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complaintant's property: Provided, however, That if a complaintant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complaintant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall beeome void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complaintant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against

the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking mentioned in this section shall be understood to signify an agreement entered into by the complaintant and the surety upon which a decree may be rendered in the same suit or proceeding against said complaintant and surety, upon a hearing to assess damages of which hearing complaintant and surety shall have reasonable notice, the said complaintant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing in this section contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

1(e). Section 13 of the Norris-LaGuardia Act, 29 U.S.C. §113, provides that:

When used in this chapter, and for the purposes of this chapter —

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employer and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employer; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as defined in this section) of "persons participating or interested" therein (as defined in this section).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft or occupation.

STATUTORY PROVISIONS INVOLVED

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(d) The term "court of United States" means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia.

2. Sections 362(a) and (b) of the Bankruptcy Reform Act of 1978, 11 U.S.C. § § 362(a) and (b), provide that:

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302 or 303 of this title operates as a stay, applicable to all entities, of —

(i) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(ii) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(iii) any act to obtain possession of property of the estate or of property from the estate.

(iv) any act to create, perfect, or enforce any lien against property of the estate;

(v) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(vi) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(vii) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

(viii) the commencement or continuation of a proceeding before the United States Tax Court concerning the debtor.

(b) The filing of a petition under section 301, 302 or 303 of this title does not operate as a stay —

(i) under subsection (a) of this section, of the commencement or continuation, of a criminal action or proceeding against the debtor;

(ii) under subsection (a) of this section, of the collection of alimony, maintenance, or support from property that is not property of the estate;

(iii) under subsection (a) of this section, of any act to perfect an interest in property to the extent that the trustee's rights and powers are subject to such perfection under section 546(b) of this title;

(iv) under subsection (a) (1) of this section, of the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's policy or regulatory power;

(v) under subsection (a) (2) of this section, of the enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power;

(vi) under subsection (a) (7) of this section, of the setoff of any mutual debt and claim that are commodity futures contracts, forward commodity contracts, leverage transactions, options, warrants, rights to purchase or sell commodity futures contracts or securities, or options to purchase or sell commodities or securities;

(vii) under subsection (a) of this section, of the commencement of any action by the Secretary of Housing and Urban Development to foreclose a mortgage or deed of trust in any case in which the mortgage or deed of trust held by said Secretary is insured or was formerly insured under the National Housing Act and covers property, or combinations of property, consisting of five or more living units; or

(viii) under subsection (a) of this section, of the issuance to the debtor by a governmental unit of a notice of tax deficiency.

RA7

AGREEMENT, dated June 19, 1974

NEW YORK STATE TEAMSTERS COUNCIL WELFARE TRUST FUND

STIPULATION

A Signed copy of the Agreement must accompany Signed Stipulation

Date 6-19-74

1. The employer agrees to contribute for any and all of his regular full-time and any and all other employees covered by this Agreement to the New York State Teamsters Council Welfare Trust Fund, as follows:

RATES OF CONTRIBUTIONS		DAILY	WEEKLY
Effective	7-1-74	4.775	19.10
Effective	7-1-75	5.40	21.60
Effective	——	—	—

All such money shall be turned over to the Trust Fund on or before the tenth (10th) day of the month following that month in which said money accrued.

2. Failure on the part of the employer to regularly contribute as specified herein above shall make him liable for all claims, damages, attorney fees, court costs, etc. plus all arrears in payments, plus a ten percent (10%) penalty. In the event the Union suspends the operations of a defaulting Employer, the Union shall not be bound by any arbitration or no strike clause in this Agreement.

3. In the event an employer is in arrears and the Union or its members stop working for collections, in addition to the above, the employer must reimburse all employees for all time lost during stoppage. The late payment of arrears by an employer shall not release or exculpate him from his responsibility to pay all claims, arrearages, penalties, etc., arising during the period that he was in arrears as determined solely by the Trustees.

4. The New York State Teamsters Council Welfare Trust Fund may at any time check the payroll records of any and all employees of the Employer covered by this Agreement at a time mutually agreed upon at no charge to the Employer, but in the event it is found that the Employer has not been complying with the Trust Fund provisions of the Agreement, the Employer shall pay the full cost of checking and auditing the books that may be necessary by the Trust officials and, in addition, shall be responsible for any and all claims that were not covered and must pay whatever discrepancies that may exist to the Trust Fund plus a ten percent penalty. The Employer shall pay reasonable attorney fees for collecting any payments, claims or penalties in arrears.

AGREEMENT, dated June 19, 1974

5. During the life of this Agreement, it is agreed that upon becoming a contributing employer to the New York State Teamsters Council Welfare Trust Fund and making the payments to said Fund, as provided for herein, the employer shall be relieved of any and all responsibility of providing benefits other than those provided by the Fund.

6. In the event an Employer is charged the cost of checking and auditing the books and feels it was unjustly charged, the Employer may appeal to the New York State Teamsters Joint State Grievance Board whose decision shall be final and binding.

7. The Welfare Trust Fund shall be open to participation by any group of members belonging to a participating Local Union and the employer may contribute to the New York State Teamsters Council Welfare Trust Fund for employees working outside the jurisdiction of the Collective Bargaining Agreement in the amounts indicated above. However, if these employees are included, the employer agrees to make contributions on *all employees* in this category subject to the same conditions and on the same basis as is provided in this stipulation, and the employer also agrees to continue to make contributions on *all of these employees* for as long as there shall be a Collective Bargaining Agreement or Agreements between the employer and the Union, subject to any and all rules and regulations or decisions covering this group that are issued by the Board of Trustees.

8. The employer agrees that should he not make contributions on 100% of all his non-union employees as required herein, the New York State Teamsters Council Welfare Trust Fund will not pay nor be liable or obligated to pay any Health and Welfare or other benefits to all his non-union employees whatsoever, whether or not contributions were made on such individuals, in which event the employer shall pay to any or all such non-union employees any and all Health and Welfare or other benefits that such employee or employees may have been entitled to or are later entitled to until such time that the Board of Trustees of the New York State Teamsters Council Welfare Trust Fund once again extends coverage to this group and only under terms decided solely by the Board of Trustees of the New York State Teamsters Council Welfare Trust Fund.

9. Should any of the provisions of this Collective Bargaining agreement be declared to be in violation of the Labor-Management Relations Act of 1947, as amended, or any other State or Federal Statute or regulations, such declaration shall in no way impair the effectiveness or continuity of the provisions of this stipulation and such provisions are hereby expressly declared to be saved from such illegality.

10. Payments to the Fund must be paid by the Employer during employees' vacation periods.

11. If an employee is granted a leave of absence, the Employer shall collect from said employee, prior to the leave of absence being effective, sufficient monies to pay the required contributions into the Welfare Trust Fund during the period of absence.

12. There shall be no deductions from equipment rental of owner-operators by virtue of contributions made to the Welfare Trust Fund, regardless of whether the equipment rental is at the minimum rate or more.

13. The employer agrees to furnish such information as may be necessary from time to time concerning his employees as will enable the Trust Fund to carry out its duty to furnish adequate coverage for such employees.

14. If a regular employee is absent because of illness or off-the-job injury and notifies the employer of such absence, the employer shall continue to make the required contributions for a period of four (4) weeks. If a regular employee is injured on the job, the employer shall continue to pay the required contributions until such employee returns to work; however, such contributions shall not be paid for a period of more than twelve (12) months.

15. All actions or proceedings, commenced by any applicant, employee, Local Union or Employer, or anyone acting in their behalf, against the New York State Teamsters Council Welfare Trust Fund, or the Trustees thereof, and any action commenced by said Trustees against any applicant, employee, Local Union or Employer pertaining to the said Welfare Trust Fund in any of its aspects shall be brought in the appropriate Court in the County of Oneida, New York. It is specifically agreed that any action commenced in any other place shall be transferred to the County of Oneida, New York. This provision relating to venue is necessitated by the fact that the Welfare Trust Fund office with all of its records and employees, is located in the County of Oneida, New York.

16. The employer contributing here under, shall post each month at each terminal, or other place of business where employees have easy access thereto, an exact copy of the remittance report form of contributions sent to the Fund.

17. All employees are expected to check the list each month and immediately notify their Local Union if proper contributions have not been made in their behalf. Failure of employees to check the list does not relieve the employer of any and all liabilities hereunder.

18. This memorandum shall become effective as of the date of execution thereof and the payments above provided shall be payable from on and after 7-1-74 . This agreement shall continue in full force and effect for the same term as the Labor Agreement and shall continue in force and effect for the life of all future agreements replacing the present Labor Agreement with the exception that any and all conditions or contributions over and above those specified herein shall be applicable.

Mark Type of Contract: Freight

Indicate Whether Contract is National Master or Area: National

We hereby certify that the provisions, terms and wording in this Stipulation is identical to that in Collective Bargaining Agreement.

Teamsters Local No. 317
566 Spencer St.
Syracuse, N.Y. 13204
Title: S/John Fortino, V.P.

Name of Company: B & L Trucking and Cartage
519 Brown Ave.
Mattydale, N.Y. 13211
Title: S/ William O. Petrusch, Jr. Pres.

RA11

AGREEMENT, dated June 1, 1976

NEW YORK STATE TEAMSTERS COUNCIL WELFARE TRUST FUND

STIPULATION

A Signed copy of the Agreement must accompany Signed Stipulation

Date 6-1-76

1. The employer agrees to contribute for any and all of his regular full-time and any and all other employees covered by this Agreement to the New York State Teamsters Council Welfare Trust Fund, as follows:

RATES OF CONTRIBUTIONS		DAILY	WEEKLY
Effective	4-1-76	6.15	24.60
Effective	4-1-77	6.90	27.60
Effective	4-1-78	7.40	29.60

All such money shall be turned over to the Trust Fund on or before the tenth (10th) day of the month following that month in which said money accrued.

2. Failure on the part of the employer to regularly contribute as specified herein above shall make him liable for all claims, damages, attorney fees, court costs, etc. plus all arrears in payments, plus a ten percent (10%) penalty. In the event the Union suspends the operations of a defaulting Employer, the Union shall not be bound by any arbitration or no strike clause in this Agreement.

3. In the event an employer is in arrears and the Union or its members stop working for collections, in addition to the above, the employer must reimburse all employees for all time lost during stoppage. The late payment of arrears by an employer shall not release or exculpate him from his responsibility to pay all claims, arrearages, penalties, etc., arising during the period that he was in arrears as determined solely by the Trustees.

4. The New York State Teamsters Council Welfare Trust Fund may at any time check the payroll records of any and all employees of the Employer covered by this Agreement at a time mutually agreed upon at no charge to the Employer, but in the event it is found that the Employer has not been complying with the Trust Fund provisions of the Agreement, the Employer shall pay the full cost of checking and auditing the books that may be necessary by the Trust officials and, in addition, shall be responsible for any and all claims that were not covered and must pay whatever discrepancies that may exist to the Trust Fund plus a ten percent penalty. The Employer shall pay reasonable attorney fees for collecting any payments, claims or penalties in arrears.

5. During the life of this Agreement, it is agreed that upon becoming a contributing employer to the New York State Teamsters Council Welfare Trust Fund and making the payments to said Fund, as provided for herein, the employer shall be relieved of any and all responsibility of providing benefits other than those provided by the Fund.

6. In the event an Employer is charged the cost of checking and auditing the books and feels it was unjustly charged, the Employer may appeal to the New York State Teamsters Joint State Grievance Board whose decision shall be final and binding.

7. The Welfare Trust Fund shall be open to participation by any group of members belonging to a participating Local Union and the employer may contribute to the New York State Teamsters Council Welfare Trust Fund for employees working outside the jurisdiction of the Collective Bargaining Agreement in the amounts indicated above. However, if these employees are included, the employer agrees to make contributions on *all employees* in this category subject to the same conditions and on the same basis as is provided in this stipulation, and the employer also agrees to continue to make contributions on *all of these employees* for as long as there shall be a Collective Bargaining Agreement or Agreements between the employer and the Union, subject to any and all rules and regulations or decisions covering this group that are issued by the Board of Trustees.

8. The employer agrees that should he not make contributions on 100% of all his non-union employees as required herein, the New York State Teamsters Council Welfare Trust Fund will not pay nor be liable or obligated to pay any Health and Welfare or other benefits to all his non-union employees whatsoever, whether or not contributions were made on such individuals, in which event the employer shall pay to any or all such non-union employees any and all Health and Welfare or other benefits that such employee or employees may have been entitled to or are later entitled to until such time that the Board of Trustees of the New York State Teamsters Council Welfare Trust Fund once again extends coverage to this group and only under terms decided solely by the Board of Trustees of the New York State Teamsters Council Welfare Trust Fund.

9. Should any of the provisions of this Collective Bargaining agreement be declared to be in violation of the Labor-Management Relations Act of 1947, as amended, or any other State or Federal Statute or regulations, such declaration shall in no way impair the effectiveness or continuity of the provisions of this stipulation and such provisions are hereby expressly declared to be saved from such illegality.

10. Payments to the Fund must be paid by the Employer during employees' vacation periods.

11. If an employee is granted a leave of absence, the Employer shall collect from said employee, prior to the leave of absence being effective, sufficient monies to pay the required contributions into the Welfare Trust Fund during the period of absence.

12. There shall be no deductions from equipment rental of owner-operators by virtue of contributions made to the Welfare Trust Fund, regardless of whether the equipment rental is at the minimum rate or more.

13. The employer agrees to furnish such information as may be necessary from time to time concerning his employees as will enable the Trust Fund to carry out its duty to furnish adequate coverage for such employees.

14. If a regular employee is absent because of illness or off-the-job injury and notifies the employer of such absence, the employer shall continue to make the required contributions for a period of four (4) weeks. If a regular employee is injured on the job, the employer shall continue to pay the required contributions until such employee returns to work; however, such contributions shall not be paid for a period of more than twelve (12) months.

15. All actions or proceedings, commenced by any applicant, employee, Local Union or Employer, or anyone acting in their behalf, against the New York State Teamsters Council Welfare Trust Fund, or the Trustees thereof, and any action commenced by said Trustees against any applicant, employee, Local Union or Employer pertaining to the said Welfare Trust Fund in any of its aspects shall be brought in the appropriate Court in the County of Oneida, New York. It is specifically agreed that any action commenced in any other place shall be transferred to the County of Oneida, New York. This provision relating to venue is necessitated by the fact that the Welfare Trust Fund office with all of its records and employees, is located in the County of Oneida, New York.

16. The employer contributing here under, shall post each month at each terminal, or other place of business where employees have easy access thereto, an exact copy of the remittance report form of contributions sent to the Fund.

17. All employees are expected to check the list each month and immediately notify their Local Union if proper contributions have not been made in their behalf. Failure of employees to check the list does not relieve the employer of any and all liabilities hereunder.

AGREEMENT, dated June 1, 1976

18. This memorandum shall become effective as of the date of execution thereof and the payments above provided shall be payable from on and after 4-1-76 . This agreement shall continue in full force and effect for the same term as the Labor Agreement and shall continue in force and effect for the life of all future agreements replacing the present Labor Agreement with the exception that any and all conditions or contributions over and above those specified herein shall be applicable.

Mark Type of Contract: Freight

Indicate Whether Contract is National Master or Area: National

We hereby certify that the provisions, terms and wording in this Stipulation is identical to that in Collective Bargaining Agreement.

Teamsters Local No. 317
566 Spencer St.
Syracuse, N.Y. 13204
Title: S/John Fortino, V.P.

Name of Company: B & L Trucking
P.O. 61 Eastwood Station
Syracuse, N.Y. 1320
Title: S/ William O. Petrusch, Jr. Pres.

LETTER OF INTENT, dated June 19, 1974

FRED A. MAGGIO
PRESIDENT AND BUSINESS AGENT

PAUL L. GAMBACORTO
SECRETARY-TREASURER

JOHN FORTINO
VICE PRESIDENT AND BUSINESS AGENT

BUSINESS AGENTS
ANTHONY CINILLUCA
DONALD JONES
JOHN PARISI

TELEPHONE
471-4184-5

TRUCK DRIVERS AND HELPERS LOCAL UNION No. 317

Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Eastern Conference of Teamsters, Teamsters Joint Council No. 18 and its various divisions.

300 SPENCER STREET
SYRACUSE, NEW YORK 13204

LETTER OF INTENT

It is agreed by and between B & L TRUCKING AND CARTAGE and TRUCK DRIVERS AND HELPERS LOCAL UNION NO. 317, that the above named company shall abide by the provisions of the NATIONAL MASTER FREIGHT AGREEMENT and shall sign said agreement when printed copies are available. Said Agreement is effective July 1, 1973 to March 31, 1976.

TRUCK DRIVERS & HELPERS LOCAL UNION NO. 317, an affiliate of the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

B & L TRUCKING AND CARTAGE

AGREED TO THIS 19th DAY OF JUNE, 1974 TO BE EFFECTIVE JULY 1, 1974.

RA16

AGREEMENT, dated June 19, 1974

THE NEW YORK STATE TEAMSTERS CONFERENCE PENSION AND RETIREMENT FUND

STIPULATION

A Signed copy of the Agreement must accompany Signed Stipulation

Date 6-19-74

1. The employer agrees to contribute for any and all of his regular full-time and any and all other employees covered by this Agreement to the New York State Teamsters Conference Pension & Retirement Fund, as follows:

RATES OF CONTRIBUTIONS		DAILY	WEEKLY
Effective	7-1-74	.48¾	19.50
Effective	7-1-75	.55	22.00
Effective	——	—	——

All such payments to be made to the New York State Teamsters Conference Pension & Retirement Fund on or before the tenth (10th) day of the month following the month in which said monies were accrued.

2. Failure on the part of the employer to regularly contribute as specified herein above shall make him liable for all claims, damages, attorney fees, court costs, etc. plus all arrears in payments, plus a ten percent (10%) penalty. In the event the Union suspends the operations of a defaulting Employer, the Union shall not be bound by any arbitration or no strike clause in this Agreement.

3. In the event an employer is in arrears and the Union or its members stop working for collections, in addition to the above, the employer must reimburse all employees for all time lost during stoppage. The late payment of arrears by an employer shall not release or exculpate him from his responsibility to pay all claims, arrearages, penalties, etc., arising during the period that he was in arrears as determined solely by the Trustees.

4. The New York State Teamsters Conference Pension and Retirement Fund may at any time check the payroll records of any and all employees of the Employer covered by this agreement at a time mutually agreed upon at no extra charge to the Employer, but in the event it is found that the Employer has not been complying with the Pension and Retirement Fund provisions of this contract, the Employer shall pay the full cost of all checking of its books that have been done and/or later to be done by the Pension and Retirement Fund officials and in addition, shall be responsible for any and all claims that were not covered and must pay whatever discrepancies as may exist plus ten percent (10%) penalty to the Pension and Retirement Fund office. The employer shall pay reasonable attorney fees for collecting any payments, claims or

5. During the life of this Agreement, it is agreed that upon becoming a contributing employer to the New York State Teamsters Conference Pension & Retirement Fund and making the payments to the said Fund, as provided for herein, the employer shall be relieved of any and all responsibility of providing benefits other than those provided by the Fund.

6. In the event an Employer is charged the cost of checking and auditing the books and feels it was unjustly charged, the Employer may appeal to the New York State Teamsters Joint State Grievance Board whose decision shall be final and binding.

7. The Pension Fund shall be open to participation by any group of members belonging to a participating Local Union and the employer may contribute to the New York State Teamsters Conference Pension & Retirement Fund for employees working outside the jurisdiction of the Collective Bargaining Agreement in the amounts indicated above. However, if these employees are included, the employer agrees to make contributions on *all employees* in this category subject to the same conditions and on the same basis as is provided in this stipulation, and the employer also agrees to continue to make contributions on *all of these employees* for as long as there shall be a Collective Bargaining Agreement or Agreements between the employer and the Union, subject to any and all rules and regulations or decisions covering this group that are issued by the Board of Trustees.

8. The employer agrees that should he not make contributions on 100% of all his non-union employees as required herein, the New York State Teamsters Conference Pension & Retirement Fund will not pay nor be liable or obligated to pay any Pension & Retirement or other benefits to all his non-union employees whatsoever, whether or not contributions were made on such individuals, in which event the employer shall pay to any or all such non-union employees any and all Pension & Retirement or other benefits that such employee or employees may have been entitled to or are later entitled to until such time that the Pension Board of Trustees of the New York State Teamsters Conference Pension & Retirement Fund once again extends coverage to this group and only under terms decided solely by the Board of Trustees of the New York State Teamsters Conference Pension & Retirement Fund.

9. Should any of the provisions of this Collective Bargaining agreement be declared to be in violation of the Labor-Management Relations Act of 1947, as amended, or any other State or Federal Statute or regulations, such declaration shall in no way impair the effectiveness or continuity of the provisions of this stipulation and such provisions are hereby expressly declared to be saved from such illegality.

10. Payments to the Fund must be paid by the Employer during employees' vacation periods.

11. If an employee is granted a leave of absence, the Employer shall collect from said employee, prior to the leave of absence being effective, sufficient monies to pay the required contributions into the Pension & Retirement Fund during the period of absence.

12. There shall be no deductions from equipment rental of owner-operators by virtue of the contributions made to the Pension & Retirement Fund, regardless of whether the equipment rental is at the minimum rate or more.

13. The employer agrees to furnish such information as may be necessary from time to time concerning his employees as will enable the Pension & Retirement Fund to carry out its duty to furnish adequate coverage for such employees.

14. If a regular employee is absent because of illness or off-the-job injury and notifies the employer of such absence, the employer shall continue to make the required contributions for a period of four (4) weeks. If a regular employee is injured on the job, the employer shall continue to pay the required contributions until such employee returns to work; however, such contributions shall not be paid for a period of more than twelve (12) months.

15. All actions or proceedings, commenced by any applicant, employee, Local Union or Employer, or anyone acting in their behalf, against the New York State Teamsters Conference Pension & Retirement Fund or the Trustees thereof, and any action commenced by the said Trustees against any applicant, employee, Local Union or Employer pertaining to the said Pension & Retirement Fund in any of its aspects, shall be brought in the appropriate court in the County of Oneida, New York. It is specifically agreed that any action commenced in any other place shall be transferred to the County of Oneida, New York. This provision relating to venue is necessitated by the fact that the Pension & Retirement Fund office, with all of its records and employees, is located in the County of Oneida, New York.

16. The employer contributing here under, shall post each month at each terminal, or other place of business where employees have easy access thereto, an exact copy of the remittance report form of contributions sent to the Fund.

17. All employees are expected to check the list each month and immediately notify their Local Union if proper contributions have not been made in their behalf. Failure of employees to check the list does not relieve the employer of any and all liabilities hereunder.

AGREEMENT, dated June 19, 1974

18. This memorandum shall become effective as of the date of execution thereof and the payments above provided shall be payable from on and after 7-1-74 . This agreement shall continue in full force and effect for the same term as the Labor Agreement and shall continue in force and effect for the life of all future agreements replacing the present Labor Agreement with the exception that any and all conditions or contributions over and above those specified herein shall be applicable.

Mark Type of Contract: Freight

Indicate Whether Contract is National Master or Area: National

We hereby certify that the provisions, terms and wording in this Stipulation is identical to that in Collective Bargaining Agreement.

Teamsters Local No. 317
566 Spencer St.
Syracuse, N.Y. 13204
Title: S/John Fortino, V.P.

Name of Company: B & L Trucking and Cartage
519 Brown Ave.
Mattydale, N.Y. 13211
Title: S/ William O. Petrusch, Jr. Pres.

RA20

AGREEMENT, dated July 10, 1974

NEW YORK STATE TEAMSTERS COUNCIL WELFARE TRUST FUND

STIPULATION

A Signed copy of the Agreement must accompany Signed Stipulation

Date 7-10-74

1. The employer agrees to contribute for any and all of his regular full-time and any and all other employees covered by this Agreement to the New York State Teamsters Council Welfare Trust Fund, as follows:

RATES OF CONTRIBUTIONS		DAILY	WEEKLY
Effective	7-1-73	4.15	16.60
Effective	7-1-74	4.77½	19.10
Effective	7-1-75	5.40	21.60

All such money shall be turned over to the Trust Fund on or before the tenth (10th) day of the month following that month in which said money accrued.

2. Failure on the part of the employer to regularly contribute as specified herein above shall make him liable for all claims, damages, attorney fees, court costs, etc. plus all arrears in payments, plus a ten percent (10%) penalty. In the event the Union suspends the operations of a defaulting Employer, the Union shall not be bound by any arbitration or no strike clause in this Agreement.

3. In the event an employer is in arrears and the Union or its members stop working for collections, in addition to the above, the employer must reimburse all employees for all time lost during stoppage. The late payment of arrears by an employer shall not release or exculpate him from his responsibility to pay all claims, arrearages, penalties, etc., arising during the period that he was in arrears as determined solely by the Trustees.

4. The New York State Teamsters Council Welfare Trust Fund may at any time check the payroll records of any and all employees of the Employer covered by this Agreement at a time mutually agreed upon at no charge to the Employer, but in the event it is found that the Employer has not been complying with the Trust Fund provisions of the Agreement, the Employer shall pay the full cost of checking and auditing the books that may be necessary by the Trust officials and, in addition, shall be responsible for any and all claims that were not covered and must pay whatever discrepancies that may exist to the Trust Fund plus a ten percent penalty. The Employer shall pay reasonable attorney fees for collecting any payments, claims or penalties in arrears.

5. During the life of this Agreement, it is agreed that upon becoming a contributing employer to the New York State Teamsters Council Welfare Trust Fund and making the payments to said Fund, as provided for herein, the employer shall be relieved of any and all responsibility of providing benefits other than those provided by the Fund.

6. In the event an Employer is charged the cost of checking and auditing the books and feels it was unjustly charged, the Employer may appeal to the New York State Teamsters Joint State Grievance Board whose decision shall be final and binding.

7. The Welfare Trust Fund shall be open to participation by any group of members belonging to a participating Local Union and the employer may contribute to the New York State Teamsters Council Welfare Trust Fund for employees working outside the jurisdiction of the Collective Bargaining Agreement in the amounts indicated above. However, if these employees are included, the employer agrees to make contributions on *all employees* in this category subject to the same conditions and on the same basis as is provided in this stipulation, and the employer also agrees to continue to make contributions on *all of these employees* for as long as there shall be a Collective Bargaining Agreement or Agreements between the employer and the Union, subject to any and all rules and regulations or decisions covering this group that are issued by the Board of Trustees.

8. The employer agrees that should he not make contributions on 100% of all his non-union employees as required herein, the New York State Teamsters Council Welfare Trust Fund will not pay nor be liable or obligated to pay any Health and Welfare or other benefits to all his non-union employees whatsoever, whether or not contributions were made on such individuals, in which event the employer shall pay to any or all such non-union employees any and all Health and Welfare or other benefits that such employee or employees may have been entitled to or are later entitled to until such time that the Board of Trustees of the New York State Teamsters Council Welfare Trust Fund once again extends coverage to this group and only under terms decided solely by the Board of Trustees of the New York State Teamsters Council Welfare Trust Fund.

9. Should any of the provisions of this Collective Bargaining agreement be declared to be in violation of the Labor-Management Relations Act of 1947, as amended, or any other State or Federal Statute or regulations, such declaration shall in no way impair the effectiveness or continuity of the provisions of this stipulation and such provisions are hereby expressly declared to be saved from such illegality.

10. Payments to the Fund must be paid by the Employer during employees' vacation periods.

11. If an employee is granted a leave of absence, the Employer shall collect from said employee, prior to the leave of absence being effective, sufficient monies to pay the required contributions into the Welfare Trust Fund during the period of absence.

12. There shall be no deductions from equipment rental of owner-operators by virtue of contributions made to the Welfare Trust Fund, regardless of whether the equipment rental is at the minimum rate or more.

13. The employer agrees to furnish such information as may be necessary from time to time concerning his employees as will enable the Trust Fund to carry out its duty to furnish adequate coverage for such employees.

14. If a regular employee is absent because of illness or off-the-job injury and notifies the employer of such absence, the employer shall continue to make the required contributions for a period of four (4) weeks. If a regular employee is injured on the job, the employer shall continue to pay the required contributions until such employee returns to work; however, such contributions shall not be paid for a period of more than twelve (12) months.

15. All actions or proceedings, commenced by any applicant, employee, Local Union or Employer, or anyone acting in their behalf, against the New York State Teamsters Council Welfare Trust Fund, or the Trustees thereof, and any action commenced by said Trustees against any applicant, employee, Local Union or Employer pertaining to the said Welfare Trust Fund in any of its aspects shall be brought in the appropriate Court in the County of Oneida, New York. It is specifically agreed that any action commenced in any other place shall be transferred to the County of Oneida, New York. This provision relating to venue is necessitated by the fact that the Welfare Trust Fund office with all of its records and employees, is located in the County of Oneida, New York.

16. The employer contributing here under, shall post each month at each terminal, or other place of business where employees have easy access thereto, an exact copy of the remittance report form of contributions sent to the Fund.

17. All employees are expected to check the list each month and immediately notify their Local Union if proper contributions have not been made in their behalf. Failure of employees to check the list does not relieve the employer of any and all liabilities hereunder.

AGREEMENT, dated July 10, 1974

18. This memorandum shall become effective as of the date of execution thereof and the payments above provided shall be payable from on and after 7-1-73 . This agreement shall continue in full force and effect for the same term as the Labor Agreement and shall continue in force and effect for the life of all future agreements replacing the present Labor Agreement with the exception that any and all conditions or contributions over and above those specified herein shall be applicable.

Mark Type of Contract: Freight

Indicate Whether Contract is National Master or Area: National

We hereby certify that the provisions, terms and wording in this Stipulation is identical to that in Collective Bargaining Agreement.

Teamsters Local No. 317
566 Spencer St.
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Name of Company: B & L Trucking
519 Brown Ave.
Mattydale, N.Y. 13211
Title: S/ William O. Petrusch, Jr. Pres.

CHARGE FILED WITH NATIONAL LABOR RELATIONS BOARD, dated August 21, 1981

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

Case No. 3-CC-1179 Date Filed August 21, 1981

1. Labor Organization or its agents against which Charge is brought

a. Name — International Brotherhood of Teamsters, Local 317

b. Union Representative to Contact — Everett L. Campbell

c. Phone No. — (315) 471-4164

d. Address — 566 Spencer Street, Syracuse, New York 13208

e. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) 8(b) (4) (11) (B) of the National Labor Relations Act and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge —

Upon information and belief, since on or about July 24, 1981, and at all times since that date, Teamster Local 317, through its officers, agents and representatives, has threatened, coerced or restrained Camden Wire and Omega Wire with an object of forcing or requiring Camden Wire and Omega Wire to cease doing business with B & L Distribution Center, another person.

3. Name of Employer — B & L Distribution Center

4. Phone No. (315) 437-7471

5. Location of Plant Involved — 5900 Firestone Drive
DeWitt, New York 13214

6. Employer Representative to Contact —
William Petrusch

9. No. of Workers Employed — 9

10. Full Name of Party Filing Charge —
B & L Distribution Center

11. Address of Party Filing Charge — 5900 Firestone Drive
DeWitt, New York 13214

12. Telephone No. — (315) 437-7471

RA25

CHARGE FILED WITH NATIONAL LABOR RELATIONS BOARD, dated August 21, 1981

13. Declaration

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By Louis P. Dichmont
(Signature of representative or person making charge)

Attorney
(Title or office, if any)

Address BOND, SCHOENECK & KING
One Lincoln Center, Syracuse NY

(315) 422-0121 August 21, 1981
(Telephone number) (Date)

EXCERPTS FROM HEARING BEFORE BANKRUPTCY COURT, Dated September 8, 1981

JUDGE: Well, in any event, we have a Chapter 13, and I think that presents a problem for the union. There is a case in the Ninth Circuit that I think it was cited by Mr. Costa, in his brief. Now did you see that Mr. LaVaute?

JRL: I received that this morning, Your Honor, I did read the decision, I believe that it deals with the question . . .

JUDGE: NLRB within the National Labor Relations Act.

JRL: Of the Court's ability to set aside the collective bargaining agreement which is not an issue at this point.

JUDGE: No, no, but the interference with the bargaining of two agents such as that as the labor movement on one side and the employer on the other side having adopted a collective bargaining agreement. It seems to me that if the Court did not have any jurisdiction at all to interfere in any labor dispute which I think that would be a labor dispute, would counterveil your argument that the . . . what was the act again.

COSTA: The Norris-LaGuardia Act.

JUDGE: The Norris-LaGuardia Act would prevent jurisdiction here.

JRL: May I respond to that, Your Honor?

JUDGE: Yes.

JRL: The Norris-LaGuardia Act states in Section 104 I believe is the precise section, that the Federal Court shall not have jurisdiction to issue an injunction in a labor dispute. It does not deal with and does not purport to cover all the various different other types of action a Federal Court may take. It prohibits . . .

JUDGE: This is one of the others, isn't it?

JRL: What? I don't know.

EXCERPTS FROM HEARING BEFORE BANKRUPTCY COURT, Dated September 8, 1981

JUDGE: Involving the interpretation and the conflict between the Norris-LaGuardia Act and the Bankruptcy Code.

JRL: Well the statute deals with the prohibition against the issuance of an injunction. Now in the *Bohack* case, the Second Circuit Case that said the Federal Bankruptcy Court as well as the *Third Avenue Transit* case; they said Bankruptcy Court, did not have authority to issue an injunction, but did not say that the Bankruptcy Court does not have other authority. In fact, *Bohack* expressly said that it may well be that the Bankruptcy Court may determine that this agreement should be set aside as an executory contract.

JUDGE: No, they were arguing about Section 313.

JRL: Well, I believe that the same issue was, that was the issue involved before the Ninth Circuit — the question of whether the Bankruptcy Court could set aside the agreement. That is not the issue that we are considering here whether this Court has authority . . .

JUDGE: I grant you that. But I think it's — it can form the basis for a conclusion that if the Court has the authority to do that, it can issue an injunction in this type of case.

JRL: That's what *Bohack* said you don't have authority to do.

JUDGE: Well, in that context, perhaps, that the case, and I think that I would have agreed with the Second Circuit in that particular case, that they were interfering with a normal business relationship between the union and its employees. But here, you don't have that situation.

JRL: Well, I don't know what that, I didn't read that in the Court's decision.

EXCERPTS FROM HEARING BEFORE BANKRUPTCY COURT, Dated September 8, 1981

JUDGE: Well, I'm saying, I didn't say that it said that. I'm just saying that I interpret it that way. I said that in this case the employees, if there are any here, I'm not sure there are any here, certainly have a stake in the issuance of this thing too, in solving this issue too because if you insist on this particular proceeding and were to be successful, you would be the end of the business.

JRL: I don't know that to be true.

JUDGE: Well, I have to make some assumptions here and I got to assume that if you continue picketing, this man cannot stay in business any longer.

JRL: Your Honor, I would point out that under the provisions of the new Act, the very provision which authorizes a stay of proceedings that's relied on by the petitioner, the burden of proof, at this point as to proving that the petitioner is entitled to a continuance of this restraining order, is upon the petitioner. So I would merely indicate to the Court that I believe that it's incumbent upon petitioner to make its case to meet the burden so that there shouldn't be a reliance upon assumptions as to what may happen or could happen.

JUDGE: I can take some proof right now. If you want to take it right now.

JRL: I'm not, Your Honor, I don't have the burden, and I'm not suggesting that . . .

JUDGE: Well, I'm not suggesting anything. I'm just saying if you're ready to go, I'm ready to go. Have you got any proof, Mr. Costa?

COSTA: I have my principal right here, the debtor.

JUDGE: All right, then swear him in.

COSTA: If your willing, Mr. LaVaute, if not I've got a complaint to be served on you shortly.

EXCERPTS FROM HEARING BEFORE BANKRUPTCY COURT, Dated September 8, 1981

JRL: When you get around to it, let me know Mr. Costa.

JUDGE: That's another issue.

COSTA: Fine, I'll be glad to go along with the Court.

JUDGE: We are talking about whether or not we have here a problem of whether or not this man can stay in business.

COSTA: I'll be glad to go along with the Court.

JUDGE: Go ahead, I'm telling you to go ahead.

BLASLAND: The first question really is to whether he has anything to do with this alleged corporation which is he's not a corporation.

JUDGE: Well, we're going to straighten that out here, too.

BLASLAND: I think we ought to straighten that out first, isn't that the first item?

JUDGE: Present your proof.

COSTA: Keep it to the issue.

JUDGE: All we're getting at is here the question of straightening out the facts and on question of what the corporation's status is as vis a vis the individual, and whether or not there is any basis here for concluding that the injunction is necessary to keep this business open. . . . Mr. LaVaute has an opportunity to examine him on that question.

JRL: Well, Your Honor, I'm not . . . your not asking my acquiescence in this anyway.

JUDGE: What's that?

JRL: Your're not asking me if I would go along with this anyway.

JUDGE: Laughter. Call a witness.

BAILIFF: Please put your right hand and state your full name.

PETRUSCH: William O. Petrusch, Jr.

EXCERPTS FROM HEARING BEFORE BANKRUPTCY COURT, Dated September 8, 1981

BAILIFF: Do you solemnly swear the testimony you're about to give in this proceeding is the truth, the whole truth so help you God?

PETRUSCH: I do.

BAILIFF: Please by seated.

JUDGE: All right Mr. Costa, go ahead.

COSTA: Thank you. Can I have your name and address for the record?

PETRUSCH: William O. Petrusch, Jr. 9569 Southern Road, Brewerton.

COSTA: You're the debtor in the matter herein, Bankruptcy Number 80-00985. How long have you been the principal of the debtor's business.

PETRUSCH: Since 1976.

COSTA: ..... business.

PETRUSCH: Originally it was called the Robert M. Haley Warehouse, and then upon the retirement of Mr. Robert M. Haley, I took over the ownership of it and in conjunction with . . . it was a family owned operation. I called it the B & L Distribution Center and it's d/b/a William O. Petrusch, Jr.

COSTA: And that's the business that currently enjoys the status of Chapter 13.

PETRUSCH: Yes, sir.

COSTA: Now, there's been some reference to a corporation, when was that corporation formed.

PETRUSCH: 19 . . .

COSTA: Were you ever connected with the W B & L Trucking and Cartage Company, Inc.

PETRUSCH: Yes, sir.

COSTA: All right. In what capacity?

PETRUSCH: In 1974, with my family, we started a trucking Company, originally it was called Bill and Larry, which was the partner that I had. And at

EXCERPTS FROM HEARING BEFORE BANKRUPTCY COURT, Dated September 8, 1981

the time of this alleged stipulation we had filed for incorporation under New York State Law and they had kicked it back as nonacceptable because it was in conflict with a company in New York City. So on advice of our attorney at that time, Mr. Charles Engel, he told us that what he recommended was rather than change everything and etc. would be to add a name or I mean an initial or a name to what we had already had. So upon our incorporation request on a second time, we called ourselves the W B & L which would be for all the principals in.

COSTA: W B & L Trucking Company . . .

PETRUSCH: And it has always been since 1975, it has always been called W B & L.

COSTA: Let me ask you this.

PETRUSCH: Go ahead.

COSTA: Were you ever a principal in the corporation, an officer.

PETRUSCH: Yes, sir. At one time I was the president and the chairman of the board, according to the corporate papers.

COSTA: When was that discontinued?

PETRUSCH: In 19 . . .

COSTA: I mean when was your role as a corporate officer discontinued?

PETRUSCH: My wife had an attorney by the name of Joseph M. Kelly originally in the Kemper Building. In 1977 or 6 we separated and we were separated for three years, and because of the separation and etc. the two businesses so that she would, ya know, have part and have an income and etc. Mr. Kelly had me go and sign a separation agreement whereby I relinquished all stock, all title, all ownership and everything to my wife and to

EXCERPTS FROM HEARING BEFORE BANKRUPTCY COURT, Dated September 8, 1981

the rest of the family. In return for that, she once sued me for any alimony support or nothing and the company would give her a salary on which she still to this day gets a salary every week, and I, right now I'm considered the president and general manager of it on just her behalf and that is all.

COSTA: But you're no longer an officer?

PETRUSCH: No, sir.

JRL: Objection, Your Honor, you're leading the witness. He's just testified he's the president.

PETRUSCH: I have the power of attorney for my wife. Since 1979, let's see this is "81", yeah, since 1979 we did go back together again.

* * * *

PETRUSCH: I'm sorry, Your Honor, I didn't say that they were picketing our customers. They were picketing us. The sign still continued to read B & L. Although, the signs weren't what the company was. We're B & L Distribution, the sign said B & L Trucking, but they were picketing us in front of our customers, they didn't put the customers name on the sign or nothing.

COSTA: How did this effect your business, your cash flow?

JRL: Objection, I'm going to ask that the records be produced.

JUDGE: No, we're just trying to get, you suggested that there be some proof here on the question of the issuance of continuance of this temporary injunction.

JRL: The best evidence of the proof, in this respect, Your Honor, is documentary, books and records with respect to the contention that their business has been harmed . . .

EXCERPTS FROM HEARING BEFORE BANKRUPTCY COURT, Dated September 8, 1981

JUDGE: Well, want to adjourn this Utica and try it in the next two or three months?

JRL: Well . . .

JUDGE: I'll adjourn it if you want.

JRL: I would submit to you that the burden is upon the petitioner, Your Honor.

JUDGE: Well, he's trying to give it to you. Overruled.

PETRUSCH: I couldn't tell you in monetary amounts how much it has cost me, where it's cost me is that we tell them . . . the pickets would leave at 4:00 o'clock, 4:30 and what we would have to do then, is I would have to run my trucks to the companies and deliver the freight to the trucking companies after hours and do all the receiving and that or have trucks come in after hours so we were actually running a twenty hour operation, and it was costing me in terms of man hours a lot of money. Plus the inconvenience of having to ask the other people to stay and keep their people in overtime to you know also let us in.

COSTA: Were you ever notified by your customers that they would discontinue business with you . . .

PETRUSCH: Yes, Sir. Yes, Sir.

COSTA: What businesses would that be.

PETRUSCH: Well, I had one in particular customer, Blackman and Ebsery. They got a call from the S. M. Flickinger Company.

JRL: Objection, hearsay.

JUDGE: Overruled.

PETRUSCH: And the buyer over there at the S. M. Flickinger Company that told us no more coming in there, that he wouldn't buy anymore merchandise from them as long as . . .

JUDGE: You don't have to go into all of that, all you have to do is tell whether you had a call, that's all . . .

EXCERPTS FROM HEARING BEFORE BANKRUPTCY COURT, Dated September 8, 1981

PETRUSCH: Omega Wire in Williamstown, they had been in his yard and they . . .

JUDGE: Just indicate . . .

PETRUSCH: Cable and Wire had just been informed that the pickets were there and they told us if they . . .

JUDGE: Everything that you're saying about what they told you is going to go out, so just listen to the questions, will you?

* * * *

JRL: Now, how long have you had a relationship with Teamsters Local 317 in terms of having some kind of signed agreement with them?

PETRUSCH: I don't know the exact date. I'd have to look at the stipulation that was signed.

JRL: Would you say that it is . . .

PETRUSCH: I would say it would be in the latter of "74".

JRL: Would it be after the corporation was formed? Is that what you are saying?

PETRUSCH: No, Sir.

JRL: You had a relationship before the corporation was formed?

PETRUSCH: Pardon?

JRL: You had a relationship with Local 317 . . .

PETRUSCH: We had a relationship. I was forced into it.

JRL: Well, forced or not, did you have some kind of a contract with Local 317.

PETRUSCH: I had a signed agreement with them. It was a stipulation. It was not a contract. I have never signed a contract. You can't prove one, you can't show me one.

JRL: Is that right?

PETRUSCH: I have never signed a contract. I signed two stipulations, and I have never signed an agreement. My attorney, Mr. Costa, has both of them.

EXCERPTS FROM HEARING BEFORE BANKRUPTCY COURT, Dated September 8, 1981

JRL: Mr. Costa, could I ask you to produce those please?

COSTA: I thought you mentioned you had the copies this morning.

JRL: I want to see what you have. It's his testimony. I want to see what he's talking about.

* * * *

JRL: Where did that corporation operate out of, what address? Would you tell me please.

PETRUSCH: Why?

JRL: Well, in the beginning you said it was formed in 1974, did you?

PETRUSCH: It's had numerous addresses.

JRL: Well, tell us where its been out of.

PETRUSCH: 911 Brown Ave., Midler Ave., Rydings Road, Solar Street, Spencer Street, Barston Drive, there's numerous addresses.

JRL: How about Hiawatha Boulevard?

PETRUSCH: Yes, there, Hiawatha Boulevard, 911 East Hiawatha.

JRL: And also Firestone Drive, right?

PETRUSCH: Yes, sir, Firestone Drive.

JRL: Now, you've referred to an entity called B & L Distribution.

PETRUSCH: Yes, Sir.

JRL: Where did that operate out of?

PETRUSCH: That operated out of a warehouse at 911 East Hiawatha, Rydings Road and Firestone Drive.

JRL: So that in all the places where you've testified the corporation operated out of, the B & L Distribution also operated out of. Is that correct?

PETRUSCH: There's nothing . . .

JRL: Is that correct?

PETRUSCH: There's nothing hidden there.

EXCERPTS FROM HEARING BEFORE BANKRUPTCY COURT, Dated September 8, 1981

JRL: I'm not asking you that, I'm asking you is that correct?

PETRUSCH: Yes, Sir.

JRL: Did you know that your operation as far as the union was concerned was called B & L Trucking?

PETRUSCH: Yes, sir.

JRL: Or B & L Trucking and Cartage?

PETRUSCH: Yes, Sir.

JRL: And you were aware of that when you signed these various documents that are in evidence as Exhibits "1", "2" and "3"?

PETRUSCH: I don't understand.

JRL: Did you know that the union was under the impression that it was B & L Trucking or B & L Trucking and Cartage?

COSTA: Objection.

JUDGE: Sustained. . . .

JRL: Did you ever tell, who did you deal with from the union?

JUDGE: Are you objecting?

COSTA: Yes, your Honor.

JUDGE: Please stand up so I can see you at least.

COSTA: Foundation for when and where, that type of thing.

JRL: In 1974 when you signed the stipulations in the Fringe Benefit Funds, who did you deal with in the Union, in Local 317?

PETRUSCH: As far as I can remember, it was a Mr. Fortino.

JRL: Mr. Fortino?

PETRUSCH: Yes.

JRL: And you testified that when you signed the stipulations you were aware there was B & L Trucking on there, right?

COSTA: I object. He did not testify to that, that question was objected to and sustained.

EXCERPTS FROM HEARING BEFORE BANKRUPTCY COURT, Dated September 8, 1981

JRL: No, that wasn't the question. The question sustained was whether he new the union knew there was a corporation.

JUDGE: There was no question like that. I sustain the objection. You may ask him in another form.

JRL: You testified the Union began picketing in July of this year. Is that correct? Began picketing of the Trucking Company.

PETRUSCH: I would have to think about that for moment. Yes.

JRL: And the picketing began on Hiawatha Boulevard. Is that correct?

PETRUSCH: No, Sir.

JRL: Now where did the picketing begin?

PETRUSCH: Where, I'm sorry, you're right. It began on Hiawatha Boulevard.

JRL: And at that time what entity is your testimony that was at the Hiawatha Boulevard?

PETRUSCH: W B & L Trucking and Cartage.

JRL: The corporation?

PETRUSCH: Yes.

JRL: And has that entity gone out of business or not?

PETRUSCH: It ceased operation.

JRL: When?

PETRUSCH: As of, I don't know the exact date.

JRL: When the picketing started?

PETRUSCH: No, Sir.

JRL: After?

PETRUSCH: No, Sir.

JRL: Before?

PETRUSCH: Before.

JRL: So that your testimony is that by the time picketing started, W B & L Corporation was not doing business. Is that correct?

PETRUSCH: That's right.

EXCERPTS FROM HEARING BEFORE BANKRUPTCY COURT, Dated September 8, 1981

JRL: And it has not been doing business since that time. Is that correct?

PETRUSCH: I, Your Honor, can I say something?

JUDGE: No, just answer the question.

PETRUSCH: I don't know how to answer that. I don't know how . . .

JRL: Well let me ask you this. Has it been engaged in trucking of materials.

PETRUSCH: No sir, its in the truck lease — its leasing some vehicles but other than that its not in the process of any . . .

JRL: Who's it leasing vehicles from?

PETRUSCH: Its leasing to.

JRL: To whom.

PETRUSCH: To the B & L Distribution.

* * * *

JRL: After the picketing commenced, you've testified W B & L was no longer in business. Is that correct?

PETRUSCH: I don't know how to answer that, Your Honor.

(Simultaneous voices of JRL and Petrusch)

PETRUSCH: I refuse to answer.

JRL: Well, let me rephrase it.

PETRUSCH: All right.

JRL: After the picketing commenced, W B & L no longer did any trucking — is that correct?

PETRUSCH: W B & L did not do any trucking.

JRL: After the picketing commenced, B & L Distribution did some trucking?

PETRUSCH: No sir, no sir, B & L Trucking . . .

JUDGE: . . . answer the question, why don't you wait? Next question.

PETRUSCH: All right. Okay.

JRL: So your testimony is that B & L Distribution of B & L warehouse has not done any trucking . .

EXCERPTS FROM HEARING BEFORE BANKRUPTCY COURT, Dated September 8, 1981

PETRUSCH: No, sir.

JRL: All right, what is the situation?

JUDGE: Mr. LaVaute, I think you better explain to the witness the difference between what you mean as trucking, moving of freight by a truck, and the trucking business which I think he is confusing with the moving of freight at the warehouse.

JRL: Yes. Moving of freight is what I'm referring to.

PETRUSCH: Okay, we are not doing any trucking as per se Pilot, Roadway, or anything like that. We are doing warehouse deliveries. We are doing . . .

JRL: You are moving freight from the warehouse, is that correct?

PETRUSCH: We are moving freight from the warehouse. Right.

JUDGE: Overruled on the objection.

JRL: Now, was there a warehouse at Hiawatha Boulevard?

PETRUSCH: Yes, sir.

JRL: Was that the B & L warehouse or the W B & L warehouse?

PETRUSCH: That is the B & L Distribution warehouse.

JRL: At Hiawatha Boulevard?

PETRUSCH: Yes, sir.

JRL: And, did W B & L do any moving of freight from the B & L warehouse at Hiawatha Boulevard?

COSTA: Your Honor, the question has been answered. We've been over this several times already.
(Various simultaneous voices)

JUDGE: I'm going to let him answer the question.

PETRUSCH: I didn't understand the question, I'm sorry.

JUDGE: He wants to know simply whether or not the trucking company that we talked about as the corporation ever moved any freight out of the warehouse.

EXCERPTS FROM HEARING BEFORE BANKRUPTCY COURT, Dated September 8, 1981

PETRUSCH: No, sir. They did for the warehouse but under the lease, that's all.

JUDGE: What lease?

PETRUSCH: We leased the truck from . . .

JUDGE: You mean, since you've closed down the trucking corporation . . .

PETRUSCH: Yes, sir. We have the authority that the trucking company owns is leased to the warehouse and the one truck that the trucking company owns is leased to the warehouse. Other than that, sir there is no other activities going on . . .

JRL: All right, now, let me . . .

PETRUSCH: I'll bring the books in tomorrow and I'll meet you here.

JRL: Mr. Petrusch, just listen to this, would you?

PETRUSCH: All right.

JRL: Your testimony is that W B & L had a truck?

PETRUSCH: Two.

JRL: Two trucks and they've leased one truck to B & L Distribution, is that correct?

PETRUSCH: That's right.

JRL: And they've leased the operating authority for trucking to the B & L Distribution, is that correct?

PETRUSCH: They've always leased . . .

JRL: Just answer the question, is that correct?

PETRUSCH: That's correct.

JRL: So now you have B & L Distribution operating under the authorities of W B & L, is that correct?

PETRUSCH: They're not operating under it no. They're leasing it. Just like any other . . .

JRL: What are they doing with it?

PETRUSCH: They're leasing it.

JRL: Are they doing any trucking?

PETRUSCH: I run it just like I run through the authority on one truck rather than go to Ryder.

EXCERPTS FROM HEARING BEFORE BANKRUPTCY COURT, Dated September 8, 1981

JRL: The authority gives you the authority to perform trucking, doesn't it?

COSTA: Objection.

(Various simultaneous voices.)

JUDGE: Overruled. He's got a right to develop this.

JRL: Mr. Petrusch, tell the Court what the authority allows you to do. What is the authority?

COSTA: Objection. There is no authority established . . .

JUDGE: No, he's overruled. He's asking him to explain the word he used.

PETRUSCH: The authority gives us the authority to go from one point to another.

JRL: The authority is given by whom. What body.

PETRUSCH: The ICC.

JRL: Okay. How about the Department of Transportation, New York State?

PETRUSCH: Right.

JRL: All right. Then the authority is the government's permission to perform trucking operations, is that correct?

PETRUSCH: Sure.

JRL: Okay. And this authority is given to a particular operating entity, is that correct? They give it to an individual company or corporation.

PETRUSCH: That's right.

JRL: And your testimony is what you have done is taken the authority formerly used by W B & L — Right? — And now you've leased that to B & L so that B & L can operate under the authority that previously was given to W B & L, is that correct?

COSTA: Objection, I don't think he quite said that.

JRL: Well, let me ask him if that's the case.

PETRUSCH: I don't know what you're saying — say that question again? The way you say . . .

EXCERPTS FROM HEARING BEFORE BANKRUPTCY COURT, Dated September 8, 1981

JUDGE: What he's saying . . . Let's shorten this up, now, what he's saying to you is, has the warehouse corporation taken over the rights of the ICC grants and the rights of the State Transportation . . .

PETRUSCH: Just recently, yes sir.

JUDGE: They took them over?

PETRUSCH: Right. No, they haven't taken them over, they pay the corporation a sum for the lease of this authority.

JRL: For the right to use that authority, correct?

PETRUSCH: For the right to use it. Just primarily for the warehouse, though.

JUDGE: What do you mean, primarily for the warehouse.

PETRUSCH: Just so that the warehouse can transport its merchandise. That's the only reason.

JUDGE: Well, are you exercising the rights granted by the ICC and the State Department?

PETRUSCH: Yes, sir.

JRL: Did W B & L ever perform trucking out of the W B & L warehouse?

PETRUSCH: W B & L . . .

JUDGE: Mr. LaVaute, why don't you stick with the trucking corporation and the warehouse so we can understand. He gets confused every time you ask him a question . . .

JRL: Did the trucking corporation ever perform movement of freight out of the warehouse?

PETRUSCH: Yes.

JRL: And when the trucking corporation did that, did it do it with the same drivers who are covered by the Union contracts?

PETRUSCH: No, sir.

JRL: Who was it done with?

PETRUSCH: My son.

EXCERPTS FROM HEARING BEFORE BANKRUPTCY COURT, Dated September 8, 1981

JRL: Your son? You didn't cover your son under the stipulation?

PETRUSCH: No, sir.

(Various simultaneous voices)

JRL: You didn't pay for anyone under the stipulation, though, did you?

PETRUSCH: Yes, sir.

COSTA: Objection.

JUDGE: Overruled.

JRL: Pardon me.

PETRUSCH: Yes, I did.

JRL: You did pay, but not for your son?

PETRUSCH: No, sir.

JRL: Is he one of the people for which they've audited . . .

PETRUSCH: Pardon? No, sir, no . . .

JRL: You want to listen to my question first?

PETRUSCH: I know what you're saying, he was not . . .

JRL: Well, don't anticipate, just listen, is he one of the employees that the audit indicated that your company owes money on?

PETRUSCH: No, sir.

JRL: The audit didn't pick him up?

PETRUSCH: No, sir.

JRL: Mr. Petrusch, at the time that the trucking corporation was still doing trucking out of Hiawatha Boulevard, are you with me?

PETRUSCH: Yes.

JRL: Was there a sign on that location indicating a name of a company?

PETRUSCH: Yes.

JRL: Did that sign say B & L Distribution Center?

PETRUSCH: Yes.

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EXCERPTS FROM HEARING BEFORE BANKRUPTCY COURT, Dated September 8, 1981

JRL: The trucking was in 74. B & L Trucking?

PETRUSCH: W B & L Trucking, yes sir.

JRL: Have you ever filed a certificate of doing business.

PETRUSCH: For who?

JRL: For B & L. For the warehouse.

PETRUSCH: No sir.

JRL: May I have a minute, Your Honor. Do you want to get Mr. . . .

(Long pause)

JRL: I have nothing further of the witness.

JUDGE: Mr. Blasland do you have any?

BLASLAND: Mr. Petrusch please clarify what you stated in your schedules what the business was for B & L Distribution Center. Can I offer to refresh your memory? The question is in what business are you engaged. Did you refresh your memory?

JRL: I object to this procedure there has been no indication on the record that his memory is exhausted. There is no need at this point to refresh his memory.

JUDGE: Sustained.

BLASLAND: Do you recall as to what you stated your business to be?

JRL: Objection.

JUDGE: Let him finish the question.

BLASLAND: When you filed your schedules in your chapter 13 proceeding.

JUDGE: Overruled. Go ahead.

PETRUSCH: Yes sir, it was public warehousing, distribution and trucking of the same. Public warehousing and storage . . .

JUDGE: Mr. Costa, do you have anything further on redirect?

JUDGE: Anything further Mr. LaVaute?

JRL: No Sir.

EXCERPTS FROM HEARING BEFORE BANKRUPTCY COURT, Dated September 8, 1981

JUDGE: You may step down. Do you want something else. Do you have any further witnesses?

COSTA: No, Your Honor. Not for the limited purposes of this.